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**An Analysis of the South China Sea Territorial Dispute: China, The
Philippines, and The West Philippine Sea.**

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ABSTRACT

The Philippines initiated arbitration in UNCLOS concerning China's maritime claims and China's unlawful activities in the West Philippine Sea. The UNCLOS Arbitral Tribunal awarded its decision in favor of the Philippines. The Tribunal decided that China's claims on the maritime features in the West Philippine Sea and its nine-dash line do not have any basis in law. It also ruled that China's operations and activities in the West Philippine Sea are unlawful. China considered the Award as null and void due to the Tribunal's lack of jurisdiction. On the other hand, the moral victory of the Philippines did not come to fruition.

Despite the decision favoring the Philippines, its government downplayed the victory. The administration chose to maintain friendly diplomatic relations with China with the expectation that it can bring investments and projects that will be funded by China. As China continues its militarization activities and harassment activities in the Philippine exclusive economic zone, the current Philippine administration is still not expected to implement more local and foreign policies that implement the arbitration ruling against China.

This study assesses the UNCLOS arbitration ruling and the responses of both China and the Philippines with regard to the decision rendered. It also discusses the position of both countries and their relationship post-arbitration. This thesis argues that the Philippines has a legal basis to exercise its sovereignty and jurisdiction in the West Philippine Sea as supported by international laws and The Hague Ruling. The Philippines also has several reasons and motivations for why it should strengthen its sovereign control in the West Philippine Sea. This will also cite possible ways of settling the disputes in the West Philippine Sea in relation to The Hague Ruling including bilateral and multilateral settlements.

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INTRODUCTION

Background

The South China Sea is not just an important gateway and route for international travel and trade but has also been a crossroad of tensions and overlapping claims between the bordering states. Sovereignty disputes have been a primary issue that affects, not just the claimant states, but also the international community.

One of the most controversial claims in the South China Sea is China's nine-dash line which asserts historic rights and title in the entire South China Sea. The nine-dash line extends far away from mainland China up to the southernmost part of the South China Sea. The nine-dash line results in overlapping claims of boundaries in the jurisdiction of several other states. This is highly contested by several nations which also declare their claims and rights based on other legal and historical evidence.

The Philippines pursued a legal battle against China's claim and its so-called nine-dash line in the South China Sea that overlaps the Philippine territory. The Philippines claims the northeastern portion of the South China Sea which it specifically refers to as the West Philippine Sea. The Philippines pursued arbitration proceedings in UNCLOS regarding China's maritime claims and China's unlawful activities in the West Philippine Sea.

The UNCLOS Arbitral Tribunal rendered its decision in The Hague Ruling wherein it decided in favor of the Philippines. The Hague Ruling decided that China's claims based on historic rights on the maritime features falling within the nine-dash line have no legal basis. The Hague Ruling also clarified the classification of the contended maritime features in their natural condition. Lastly, The Hague Ruling declared China's operations and activities that violate the sovereign rights of the Philippines and endanger the maritime environment in the West Philippine Sea and the South China Sea as unlawful.

The Hague Ruling serves as a moral victory for the Philippines. It is a favorable decision that gives a good impression on the credibility of the Philippines in the international community. It also sets a good example of peaceful dispute settlement that respects international laws. However, the actions of the Philippines and its current administration do not reflect this victory as it still has not shown intensified control in the West Philippine Sea.

This thesis argues that the Philippines has a legal basis to exercise its sovereignty and jurisdiction in the West Philippine Sea as supported by international laws and The Hague Ruling. The Philippines also has several reasons and motivations for why it should strengthen its sovereign control in the West Philippine Sea. First, it has sovereign rights to exercise and enjoy its maritime resources without undue interference from China or other nations. Second, its claim of sovereignty and jurisdiction in the West Philippine Sea is anchored in international laws and non-violent measures to exercise control that adheres to international laws can be practiced. Third, the Philippines has suffered from economic losses due to the interference of China in the activities and livelihood of Filipinos in the West Philippine Sea. Other development activities that can potentially give economic benefits to the country cannot be fully realized if China continues to exercise control and its claim. Fourth, the occasional intrusions of Chinese vessels and personnel in the West Philippine Sea pose significant threats to maritime security and are expected to intensify as long as the Philippines has not exercised full control in the area.

Significance of the Study

This study contributes to the knowledge and importance of the territory, culture, and economy of the West Philippine Sea. This will be of importance in the ongoing and future studies relative to the disputes in the West Philippine Sea as it will provide an analysis of the situation of the West Philippine Sea and several factors that affect the peace and security in the area. This study will also present ideas that will give motivations for the protection and preservation of the West Philippine Sea. Some approaches for a peaceful settlement that would necessitate cooperation and diplomacy among interested parties will also be discussed in this study.

This study will provide information on the impact of the ongoing disputes and on the marine environment and resources in the West Philippine Sea that must be taken into account in the exercise of sovereignty. The study also presents recommendations on the settlement of disputes which could be taken into consideration by concerned individuals, agencies, groups, and even authorities for possible actions that may have an impact on the management of the disputes. Most of all, this study is significant because the subject matter is of common interest and international concern as it gives significant realization of the peace and security that is threatened and compromised due to the tensions in the West Philippine Sea.

Scope and Limitations

This study is focused on the issues on the disputing territorial claims in the West Philippine Sea between the Philippines and China. The context of the discussion is based on the arbitration ruling of the UNCLOS Tribunal which rendered a decision that the nine-dash line claim of China based on historical title and rights is without legal basis and China's illegal activities in the West Philippine Sea compromise the peace and security in the West Philippine Sea.

Data of this study consist of articles, gathered facts, previous research studies, and information that are used in the analysis of the motivations for settlement of territorial claims in the West Philippine Sea. The same data were also essential in the formulation of recommendations and conclusions.

The disputes of other claimant states in the West Philippine Sea and other parts of the South China Sea are not covered in this study. However, other claims are mentioned to support certain facts and information.

There is no prejudice on the perspective and position of China in this Study. There is no partiality in the presentation of opinion and information but data is objectively presented to emphasize the predicament of the Philippines and not of China. Furthermore, this study is independent and apolitical. It does not reflect nor support in any way the position, point of view, and opinions of the government of the Philippines or the People's Republic of China.

METHODOLOGY

Statement of the Problem

This thesis intends to address the following four main research questions:

1. What is the impact of The Hague Ruling in the actions of the Philippine and Chinese governments after The Tribunal rendered its decision?
2. What are the motivations for the Philippines to intensify its efforts in enforcing the Hague Ruling and exercise more sovereignty control in the West Philippine Sea?
3. What other parties have an interest in the resolution of the territorial disputes in the West Philippine Sea and how are they involved?
4. What are the best possible solutions or mechanisms that will help China and the Philippines settle their disputes without more litigation risks and violent confrontations?

Research Design

This thesis is a qualitative thesis that employs the qualitative descriptive method. The researcher used data and information from readily available reliable sources including news articles, online journals, dissertations, press release statements, statistical data, and other internet sources to get a comprehensive understanding of the topic. All sources and information were critically assessed so the researcher can come up with a substantive conclusion regarding the reasons to settle the dispute in the West Philippine Sea. Recent events and developments concerning the West Philippine Sea were also analyzed which allowed the researcher to come up with recommendations that may help in managing the dispute and settlement options.

Research Methodology

The study began with a careful selection of literature on the South China Sea dispute which specifically affects the West Philippine Sea. Information and facts relating to the beginning of the territorial disputes in the South China Sea were traced and explored through the qualitative historical-comparative methodology. All data and sources were critically evaluated through the descriptive research method. Relevant events that took place which provoked the filing of arbitration case were also highlighted to further understand the subject matter of the compulsory arbitration and the Award. Official press release statements from governments, agencies, and organizations were used to present positions, communication, and dialogues from the parties involved to avoid bias. The Hague Ruling was dissected from its main source published by the UNCLOS to avoid misinformation and partiality. Data and information that supported the motivations for settlement were analyzed in the perspective that would benefit the country's economy, adherence to international laws and policies, maintenance of maritime security, and preservation of peace and stability. Possible approaches to the settlement were explored in the context of China and the Philippines' actions and also with consideration of successful resolutions of other territorial disputes outside the South China Sea. Finally, since the dispute in the West Philippine Sea is a developing issue, recent progress and events that affect the peace and order in the West Philippine Sea are also examined to recommend the best possible options that would help resolve the conflict in the West Philippine Sea in the most peaceful and diplomatic way.

CHAPTER I – WEST PHILIPPINE SEA FACTS

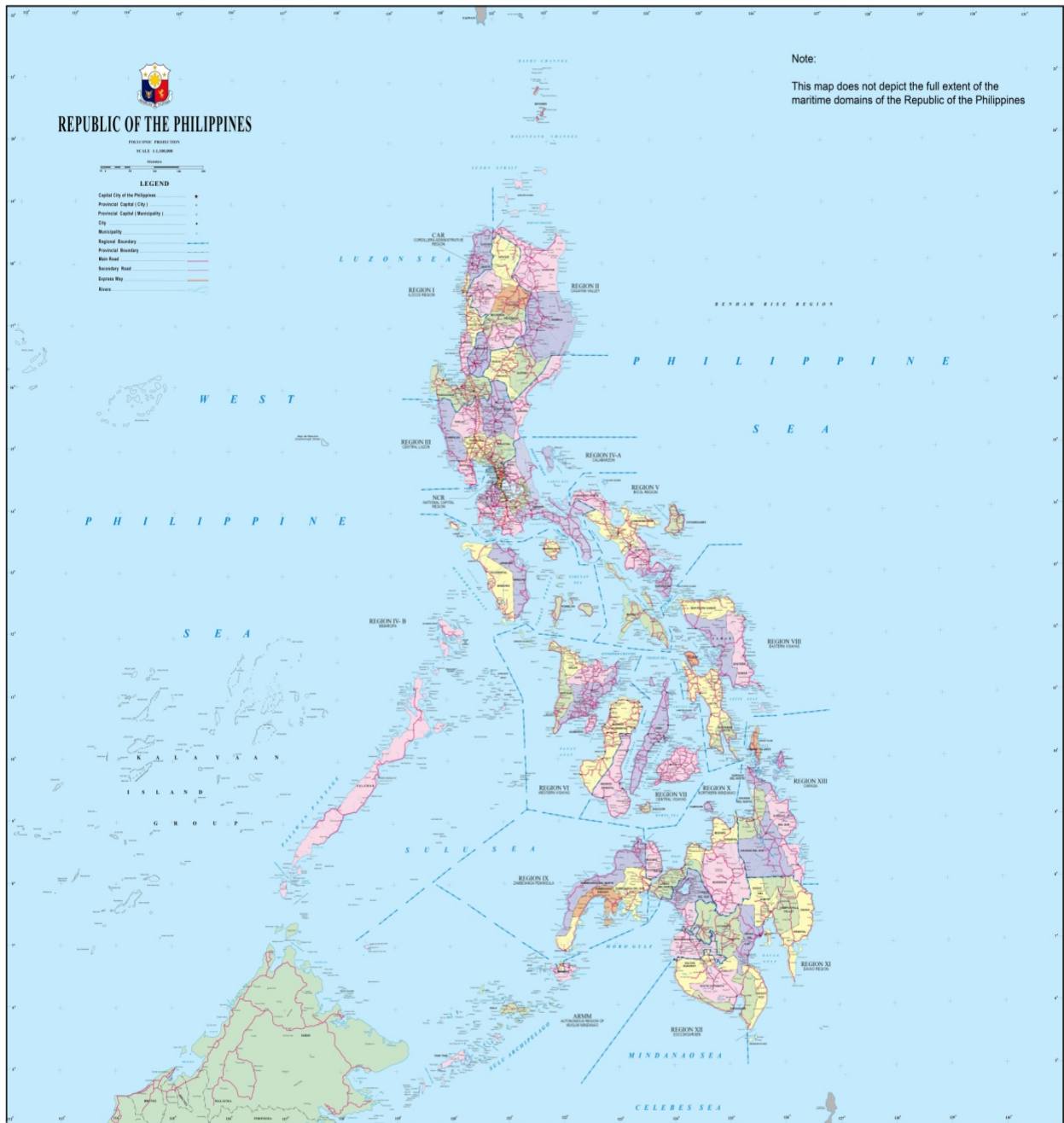
Geography of the West Philippine Sea

The Republic of the Philippines is an archipelago in Southeast Asia. It consists of more than 7,100 islands and islets with a total land area of about 300,000 square kilometers. The entire country is surrounded by the Pacific Ocean on the east, the South China Sea or the West Philippine Sea on the west, and the Celebes Sea on the south. Its northernmost part is near Taiwan and the Southwestern part is near the island of Borneo.

The West Philippine Sea refers to the eastern portion of the South China Sea. This includes the Kalayaan Islands Group, Bajo de Masinloc, the waters in the Luzon Sea, as well as the waters around the adjacent islands.

The naming of the West Philippine Sea was intended for the national mapping system of the Philippines. It emphasized the sovereignty of the Philippines within its jurisdiction and exclusive economic zone. In the peak of arguments and disputes over territorial sovereignty in the South China Sea, the executive act of naming the West Philippine Sea, symbolizes the sovereignty claim of the Philippines in the area. The Administrative Order of naming the West Philippine Sea is an action to inform the Filipinos of the legal status of the territory and a call for nationality in the peaceful fight for the rightful claim of the territory.

The West Philippine Sea is still popularly and internationally called as the South China Sea. However, the West Philippine Sea is only a specific portion in the South China Sea that is contested and legally claimed by the Republic of the Philippines as part of its territory and jurisdiction. For purposes of this study, the West Philippine Sea will be used to refer to the claim of the Philippines in the South China Sea. It will be used throughout the study to distinguish the Exclusive Economic Zone (EEZ) and sovereign territory of the Philippines in the South China Sea. This study will also mention the South China Sea as a reference to the entire South China Sea where the West Philippine Sea is located.



Philippine Administrative Map with the West Philippine Sea
 Source: National Mapping and Resource Information Authority
www.namria.gov.ph

Kalayaan Island Group

The Kalayaan Island Group (KIG) is a group of islands, reefs, rock features, and surrounding waters that belong to the Philippines. It is located in the Spratly Islands. It is situated in the West Philippine Sea and is currently part of the Province of Palawan as one of its municipalities. Nine features in the KIG are currently occupied by Philippine civilians and

military personnel. The biggest island in the KIG is the Pag-asa Island (internationally known as Thitu Island) which is approximately 280 nautical miles from Puerto Princesa, Palawan.

The Kalayaan Island Group is considered to be economically valuable for the Philippines. Its strategic location is also important for the country's national and maritime security.

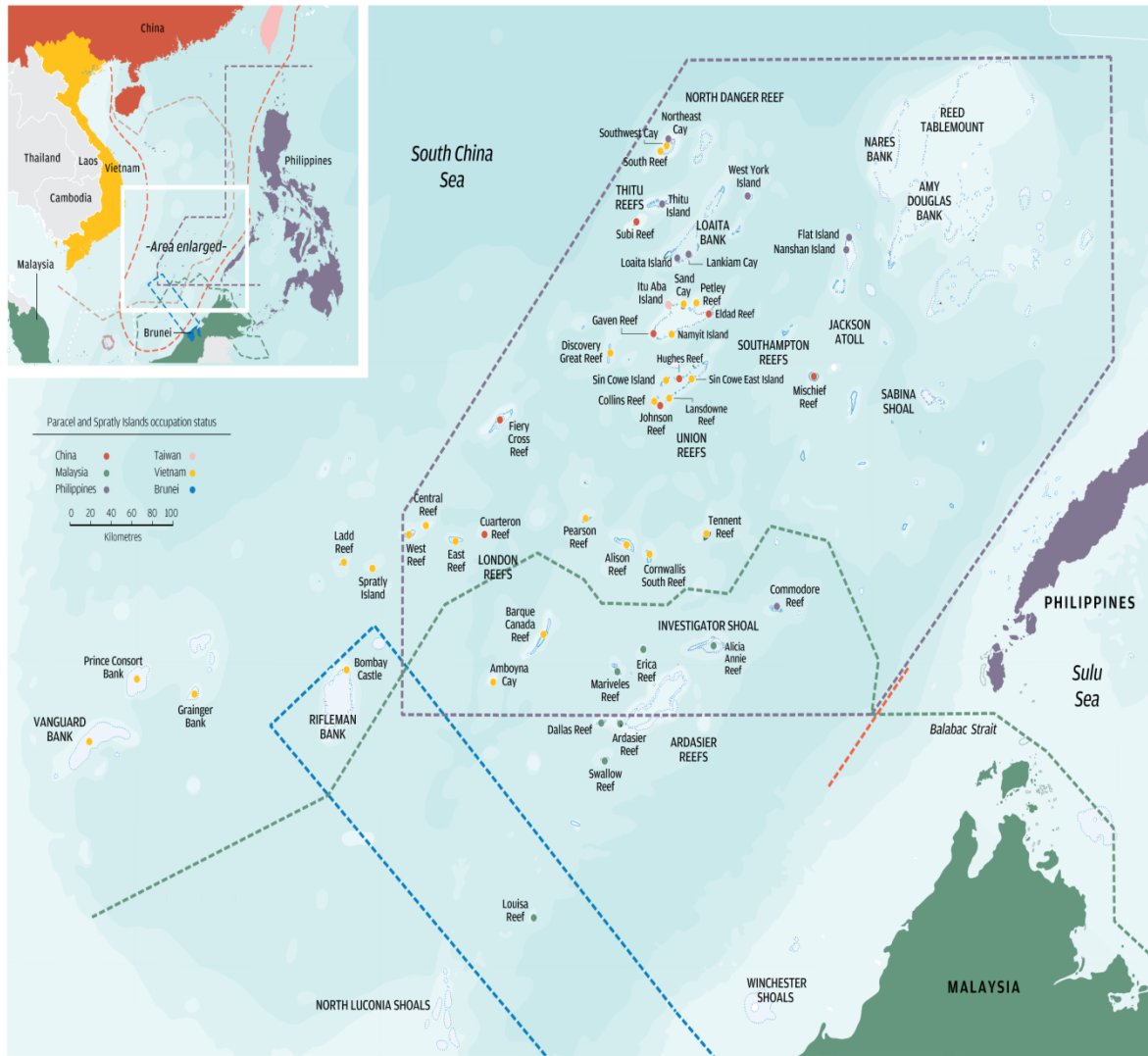
Bajo de Masinloc

Bajo de Masinloc or Panatag Shoal is an atoll of reefs and rocks located off the coast of the Province of Zambales, Philippines. It is popularly known by its international name Scarborough Shoal. It is located about 124 nautical miles from the nearest coast of the Philippines. Bajo de Masinloc is the largest coral reef formation in the South China Sea. It is a ring-shaped coral reef formation with several rocks encircling it. Bajo de Masinloc or Scarborough Shoal is referred to as Huangyan Island by China.

Overlapping Claims

The Kalayaan Island Group is claimed by six different nations. China and Vietnam are claiming the entire Spratlys. The Philippines is claiming only certain islands in the Spratlys, particularly the Kalayaan Islands Group. Malaysia is claiming only certain islands and rocks in the Spratlys. Louisa Reef, located within Brunei's exclusive economic zone, is claimed by both Brunei and China. Taiwan also claims part of Spratlys and Kalayaan Group of Islands.

Bajo de Masinloc or Scarborough Shoal is disputed by China, Taiwan, and the Philippines. The Shoal is located about 124 nautical miles from the nearest coast of the Philippines and approximately 472 nautical miles from the nearest coast of China. It is also approximately 440 nautical miles from the nearest coast of Taiwan.



Maritime Claims in the South China Sea

Source: Asia Maritime Transparency Initiative, U.S. Energy Information Administration, Global Security

<https://www.scmp.com/infographics/article/1813128/infographic-surveying-territorial-claims-south-china-sea>

China's Claims in the West Philippine Sea

China claims the West Philippine Sea as part of the entire South China Sea. China asserts that it has historical rights and title in the South China Sea supported by a map with a U-shaped line or known as the nine-dash line which extends south of mainland China. This line results in an excessive territorial claim which overlaps the borders and territories of other states and nations.

The U-shaped line first appeared in a private map in 1914 entitled 'Chinese territorial map before the Qianglong-Jiaqing period. The map was published by a private cartographer Hu Jinjie through the New Geographical Atlas of the Republic of China. The first map only showed a U-shape line that extends to Pratas Reef and Paracel Islands and did not extend further south. The same map was repeatedly published in the 1916 Map of National Humiliation and the 1927 Map of National Humiliation (Keyuan, 2012).

China modified its first published map with the U-shaped line after 1933. China disputed Vietnam's position in the South China Sea when Vietnam occupied nine of the Spratly Islands. Vietnam was under the colony of France when France annexed several islands in the Spratlys. China extended its U-shaped line up to further south with the intent of including all of the islands in the Spratly. This was a clear manifestation against Vietnam's occupation of the Spratly islands and to assert China's claim over the entire Spratly islands.

In 1935, China commissioned a geographical survey in the South China Sea and published the results in an atlas. China's Maps Inspection Committee identified 132 names for islands and islets in the South China Sea (Gao & Jia, 2013). China dispatched several naval personnel to show control over some islands in the South China Sea. When the People's Republic of China established mainland China, it already included the U-shaped line that included up to the southernmost part of the South China Sea signifying the extended claim of the territories.

In 1956, the Republic of the Philippines expressed sovereignty over some of the islands in the Spratly. A Filipino explorer named Tomas Cloma declared ownership over the islands and maritime features located in the Northeastern section of the Spratly Islands. This was immediately rejected by China. China's foreign minister reiterated that the entire Spratly Islands belong to China and are inherently Chinese territory (Gao & Jia, 2013).

China also enacted several legislations and maritime laws to support its claims in the South China Sea. It adopted the Declaration on China's Territorial Sea in 1958. The Declaration provided China's jurisdiction of the Spratly Islands and Macclesfield Bank. China promulgated Law on the Territorial Sea and Contiguous Zone in 1992 emphasizing China's land territory which includes mainland China and its offshore islands, Spratly Islands, Macclesfield Bank, and other islands.

In 2009, China made its first formal claim of the nine-dash line in UNCLOS as a protest against the joint filing of Malaysia and Vietnam. China in a note verbale stated that it has indisputable sovereignty over the islands in the South China Sea. It asserted sovereign rights and jurisdiction over the waters as well, seabed, and subsoil (Permanent Mission of the People's Republic of China, 2009). China attached a map that showed the nine-dash line but did not include the precise coordinates or any official explanation about the lines.

The Philippines challenged China's note verbale and territorial claim. The Philippines stated that the Spratly Islands comprise an integral part of the Philippines. The Philippines asserted jurisdiction over the waters adjacent to respective maritime features in some of the islands in the Spratly. The Philippines expressed sovereignty on the northeastern section of the Spratly Islands and the Scarborough Shoal, locally known as Kalayaan Islands Group and Bajo de Masinloc. It also questioned China's basis of its sovereign claim alleging that it does not have any basis in international law (Permanent Mission of the People's Republic of China, 2011).

China responded to the Philippines by reiterating its claim in the note verbale. It also pointed out that the Philippines never made any territorial claims in the Spratly Islands before 1970. China again asserted its indisputable sovereignty in the South China Sea. It added that it has abundant historical and legal evidence to support its claim (Permanent Mission of the People's Republic of China, 2011).

Other Claimant States

Taiwan

Taiwan has an overlapping claim with China and the Philippines in the Spratly Islands. Taiwan's claim is the same as China's that is based on historical rights or perspective. It occupies Itu Aba since 1956 based on the claim of the Chinese nationalists group Kuomintang government. Taiwan believes that Itu Aba rightfully belongs to Taiwan because they claimed that the Kuomintang group was the first to set foot on the Spratly Islands. Itu Aba is the largest island in the Spratlys. This is one of the maritime features in the Spratlys that is claimed by the Philippines.

Vietnam

Just like China, Vietnam claims the entire Spratly and Paracel Islands. The Spratly Islands are located 800 kilometers east of Ho Chi Minh City which is Vietnam's capital. Vietnam asserts ownership in the islands based on a historical claim which argues that it had control over the Spratly Islands since 1650. Vietnam has changed its position on the sovereignty of the islands a few times but it is now strongly claiming back the entire islands. Under a new reunified government, Vietnam reasserted sovereign claims in all of the Spratly Islands and Paracel. It also asserts vested rights based on the San Francisco Allied-Japanese Peace Conference in 1951 and the Law of the Sea's article 121 on the continental shelf.

Laws on the Sea Regime in the West Philippine Sea

Both China and the Philippines, and other claimant states in the South China Sea, are signatories of the UNCLOS. The Philippines ratified UNCLOS on May 8, 1984 and China on May 7, 1996. Ratification means that the state signatories have obligations under the UNCLOS, and UNCLOS is the legal regime with respect to their maritime laws and sea dispute resolution.

The United Nations Convention on the Law of the Sea (UNCLOS) is an international treaty that provides a framework for the allocation of rights among states in the world's seas and oceans, and help control activities to ensure conservation and protection of marine resources and the environment (Permanent Court of Arbitration, 2009). It establishes rules and regulations concerning the uses of oceans and resources. Its main role is sustainable development which includes conservation of marine biological diversity even in areas beyond national jurisdiction.

The UNCLOS is also a neutral body that serves as a balancing instrument when it comes to state practices, negotiations, and activities in the oceans. In the allocation of rights and jurisdiction among states, the UNCLOS carefully crafted policies and regulations that balanced the interests of states and protected the use of the waters without undue interference.

As signatories to the Convention, the issues in the South China Sea are comprehensively covered in four conventions as the binding maritime legal regime. These are the Convention on the Territorial Sea and Contiguous Zone, Convention on the Continental Shelf, Convention on the High Seas, and a Convention on Fishing and Conservation of Living Resources of the High Seas. These four conventions provide the foundation for state practices and maritime zones but do not cover the issues on territorial sovereignty.

Dispute Resolution

The Convention provides for the settlement of disputes through arbitration between parties of the Convention. The Convention has mechanisms for dispute resolutions which a State cannot exclude itself from such provision when it ratified the Convention. However, compulsory settlement is only limited to specific subject matters.

Under Article 9 of Annex VII of the Convention, non-participation of one party shall not be a hindrance from the Tribunal from case proceedings. The arbitral tribunal can proceed

with the arbitration even in the absence of a party or one party's failure to defend its case, provided that the tribunal can prove that it has jurisdiction over the subject matter and the claim has a basis in fact and law.

Parties of the disputes may also agree to settle their disputes outside the Convention. They can also choose alternative means to settle their disputes. Once the parties have already agreed to another means of dispute resolution, a State party can already prevent another State from proceeding to compulsory settlement.

CHAPTER 2 – WEST PHILIPPINE SEA ARBITRATION

Background of the Case

The Philippines initiated a case against China on January 22, 2013, concerning China's maritime entitlements in the South China Sea that affect specific portions in the West Philippine Sea. It alleged that China's claims based on nine-dash line are without legal merits and its dangerous operations in the area are unlawful. Arbitral proceedings were instituted in the United Nations Convention on the Law of the Sea (UNCLOS) as the arbitral tribunal.

The Philippines filed 15 submissions to the Tribunal which covered mostly the interpretation and application of UNCLOS. The issues were strategically constructed to convince the Tribunal that these fall under its jurisdiction. The submissions questioned China's legal basis of the nine-dash line and historic rights, maritime entitlements of some geographic features in the South China Sea that do not generate entitlements, unlawful operations and harassment activities of China against Philippine fishermen and vessels, and China's failure to protect the marine resources and environment in the region.

The Tribunal's jurisdiction is limited to disputes that do not resolve sovereignty matters. It also could not decide on which party has territorial sovereignty over specific maritime features. The Tribunal admitted jurisdiction on the 7 out of 15 submissions instituted by the Philippines which are as follows (Permanent Court of Arbitration, 2015):

- (1) The Scarborough Shoal generates no entitlement to an exclusive economic zone or continental shelf;
- (2) Mischief Reef, Second Thomas Shoal, and Subi Reef are not capable of appropriation by occupation or otherwise because such low tide elevations do not generate entitlements;

- (3) Gaven Reef, McKennan Reef, and Hughes Reef are low tide elevations that do not generate maritime entitlements but can serve as a basis for the determination of the breadth of the territorial sea of Namyit and Sin Cowe;
- (4) Johnson Reef, Cuarteron Reef, and Fiery Cross Reef do not generate entitlements to an exclusive economic zone or continental shelf;
- (5) China's interference with the traditional fishing activities of Filipino fishermen in the waters of the Scarborough Shoal is unlawful and endangers the lives of the Filipino locals;
- (6) China's non-fulfillment of its obligation to protect and preserve the maritime environment in the areas of Scarborough Shoal and Second Thomas Shoal constitutes violations to the provisions of the Convention;
- (7) China's dangerous operations of law enforcement vessels in the vicinity of the Scarborough Shoal which poses harm and risks to the safety and well-being of some Philippine vessels is a breach of China's duties under the Convention.

The Tribunal explicitly refused to deal with any of the submissions which involve or determine sovereignty because it falls outside its jurisdiction in accordance with the Convention. In response, China issued a diplomatic note addressed to the Republic of the Philippines dated February 19, 2013. China expressed rejection and non-acceptance of the proceedings initiated by the Philippines for lack of jurisdiction by the Tribunal to arbitrate the cases. China also published its Position Paper in December 2014. The position paper argues that (Permanent Court of Arbitration, 2015):

- (1) The subject matter is essentially about territorial sovereignty over several maritime features in the South China Sea. These subjects fall outside the jurisdiction of the UNCLOS and should not be admitted;

- (2) The arbitration initiated by the Philippines is only unilateral because it is not acknowledged by China. Thus, this breaches international laws because China and the Philippines have already agreed to settle the disputes through bilateral negotiations and Declaration of Code of Conduct;
- (3) The subject matter would constitute an integral part of maritime delimitation between China and the Philippines. Maritime delimitation was specifically highlighted by China in the Convention in 2006 and was agreed upon to be declared as falling outside the scope of UNCLOS compulsory disputes settlement and arbitration procedures.

China did not participate in any of the proceedings but the Tribunal still proceeded with the arbitration without China's recognition. In October 2015, The Tribunal delivered its award, through its press release, finding that it has jurisdiction on matters that do not involve issues on sovereignty. It also rendered a decision on the admissibility of the issues presented and submitted by the Philippines. On July 12, 2016, the Tribunal delivered its decisions and merits on the dispute.

The Hague Ruling

On July 12, 2016, the Tribunal issued its ruling and addressed three substantive issues (Permanent Court of Arbitration, 2016).

- (1) China's nine-dash line and its claim to historic rights in the South China Sea;
- (2) The status of certain maritime features in the region;
- (3) The lawfulness or legality of the activities and operations of China in the South China Sea.

Nine-Dash Line and Historic Rights

Ruling: China's claim to historic rights on the maritime resources falling within the nine-dash line area has no legal basis.

The Tribunal recognized jurisdiction concerning the historic rights as the source of maritime entitlements of China in the South China Sea because the Convention allocates rights to maritime areas and protects the pre-existing rights to resources thereof. The Tribunal concluded that any claim to historic rights to the resources in the waters of the South China Sea was already ended because they were not compatible with the provisions of the Convention concerning matters of the exclusive economic zone (Permanent Court of Arbitration, 2016). China also had no evidence that they exercised exclusive control over the waters and resources in the South China Sea other than the fact that Chinese navigators and fishermen had freedom of navigation and use of the islands in the area.

The provisions of the Convention concerning maritime zones took into consideration the historic rights of the States. To comprehensively address pre-existing rights, the Convention still respected and preserved historic fishing rights in the new exclusive economic zones. However, historic rights are only limited to the right of access to fisheries in the exclusive economic zone provided that the Coastal state has a surplus supply or cannot harvest the full allowable catch. Historic rights also cannot be applied to petroleum and mineral resources.

In 2009, China made its first formal claim of the nine-dash line in UNCLOS as a protest against the joint filing of Malaysia and Vietnam. China stated that "it has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof" (Permanent Mission of the People's Republic of China, 2009). China submitted a map that included the nine-dash line but did not publish precise coordinates of the lines. The

succeeding nine-dash line maps published by China are also not entirely consistent as to the precise location of the dashes.

The historical navigation and fishing by China in the waters of the South China Sea are not exercise of exclusive control because there was no evidence that China prevented other states from navigating in the seas and exploiting their resources. Such navigation only represented high seas freedom and not historic rights. China's claim to historic rights is incompatible with the Convention's system of maritime zones. Such historical rights were extinguished by the entry of China into the Convention.

The Status of Features in the South China Sea

Ruling: The Scarborough Shoal, Johnson Reef, Cuarteron Reef, Fiery Cross Reef, Gaven Reef, and McKennan Reef are high tide features. Subi Reef, Hughes Reef, Mischief Reef, and Second Thomas Shoal are features that are high tide in their natural conditions.

Under the Convention, rocks that cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf (Permanent Court of Arbitration, 2016). The status of the maritime features was assessed in their natural conditions. Any construction, installations, and reclamation activities in the area cannot alter or enhance the feature's status to an island that can generate any maritime entitlements. The presence of any government personnel or civilian on many of the features does not establish their capacity to sustain a stable community of people or generate an exclusive economic zone and a continental shelf.

Historical evidence of habitation is more onerous in considering the status of the features. The historical economic activities in the Spratly Islands were mere extractive in nature, including fishing and mining, but did not amount to inhabitation by a stable

community. All of the high-tide features in the Spratly Islands are rocks that do not generate an exclusive economic zone or continental shelf. Group of islands such as the Spratly Islands also do not generate maritime zones collectively as a unit (Permanent Court of Arbitration, 2016).

Chinese Activities in the South China Sea

Ruling: China had violated the sovereign rights of the Philippines within its exclusive economic zone and continental shelf. China also violated the provisions of UNCLOS by failing to protect and preserve the marine environment in the South China Sea.

Mischief Reef, Second Thomas Shoal, and Reed Bank are part of the exclusive economic zone and continental shelf of the Philippines in which the Philippines have sovereign rights to the sea areas (Permanent Court of Arbitration, 2016). China had unlawfully interfered with the petroleum exploration of the Philippines in the Reed Bank. China prevented some fishermen from fishing within the Philippine EEZ and failed to prevent Chinese nationals from fishing in the area. China also illegally constructed installations and artificial islands at Mischief Reef because the Philippines did not permit to do so.

The Scarborough Shoal is above water at high tide so it generates an entitlement to a territorial sea and its surrounding waters do not form part of an exclusive economic zone (Permanent Court of Arbitration, 2016). Any traditional fishing activities in the Scarborough Shoal are not extinguished by the Convention so China cannot restrict access to the Shoal of the Philippine fishermen with respect to their fishing activities. In the same way, the Philippines cannot prevent Chinese fishermen from fishing in the Scarborough Shoal. The Tribunal did not decide on which country has sovereignty over the Scarborough Shoal but it

acknowledged the traditional fishing rights by the fishermen from the Philippines, China, and other countries.

The Tribunal also investigated the land reclamation activities and construction of artificial islands at seven features in the Spratly Islands. Upon independent examination, the Tribunal concluded that such actions have caused severe damage to the coral reefs and the marine environment in the area. Chinese fishermen also engaged in the illegal activities of harvesting endangered sea turtles, corals, and giant clams which inflicted harm on the coral reef environment. China has violated its obligation to preserve and protect the marine environment.

China also breached its obligation in maintaining maritime safety and preventing collisions at sea. Chinese law enforcement vessels created serious risks of collision and posed danger to Philippine personnel and vessels when China approached the Philippines at high-speed levels to obstruct entry to the Scarborough Shoal on two occasions. The conduct of the Chinese law enforcement vessels was unlawful and constitutes violations under the Convention on the International Regulations for Preventing Collisions at Sea, 1972, and Article 94 of the Convention (Permanent Court of Arbitration, 2016).

Summary of Arbitration Outcome

The Arbitration Tribunal invalidated China's claims based on historic rights. It declared the nine-dash line as without legal basis. The Tribunal did not rule on the sovereignty of the disputed territories but it ruled on the legal status of the maritime features that were submitted by the Philippines for arbitration. The rulings on the legal status of the features were in accordance with the provisions of UNCLOS.

It found that none of the features in the Spratlys can be legally declared as islands because all of the features cannot sustain life economically or a community in its natural

conditions. Even the largest features including Itu Aba, Thitu Island, Spratly Island, Northeast Cay, and Southwest Cay cannot qualify as islands. Therefore, the features in the Spratlys are entitled only to territorial seas and not Exclusive economic zones or continental shelves.

Johnson Reef, Cuarteron Reef, Fiery Cross Reef, and Gaven Reef are rocks, while Hughes Reef and Mischief Reef are below water at high tide. These features are currently occupied by China but do not generate maritime entitlements of their own. Kennan Reef as a low tide elevation, and Second Thomas Shoal and Reed Bank which are submerged belong to the Philippine continental shelf.



Arbitration Outcome Map
Source: globalnation.inquirer.net

CHAPTER III – CHINA AND PHILIPPINES DIPLOMATIC RELATIONS

The Philippines and China are known for their friendly relationship which started during ancient times. Chinese traders have peacefully transacted in the Philippines for many centuries. Many Chinese locals even migrated to the Philippines and chose to settle down in the Philippines which eventually resulted in a large Filipino-Chinese community that can be found in almost all regions in the Philippines. The trade and cultural exchanges are very evident in today's Filipino society.

The diplomatic relations of China and the Philippines were first established in June 1975 through the Joint Communiqué on the Establishment of Diplomatic Relations. China and the Philippines have maintained cooperation and bilateral ties over the years. Their bilateral relationship resulted in mutual benefits, especially in terms of trade and commerce. Even with the disputes in the West Philippine Sea, China and the Philippines observed harmonious diplomatic relations, especially in areas that do not concern territorial claims. Cooperation and comprehensive ties are maintained in other areas.

Philippines' Response

When the South China Sea Arbitration Award was rendered, there was a change in the administration of the Philippines which showed an unexpected response by the Philippines. The arbitration case was filed under the Aquino administration of the Philippines with great courage and belief in the rule of law. The decision was a triumph and a moral victory for the Filipinos. However, the strategy implemented following the Award turned out to be puzzling.

In the same year the arbitration was decided, the Duterte Administration led by the elected President Rodrigo R. Duterte succeeded the Aquino Administration. The Duterte Administration had programs and policies that were very different compared to the programs

of the former President Benigno Aquino Jr. The differences in strategies were evident in the response of the Duterte Administration and the acknowledgment of the South China Sea Arbitration Award.

The administration of President Duterte was expected to take more stringent efforts in securing the West Philippine Sea. During the start of his term, President Rodrigo Duterte announced the establishment of a no-fishing zone and marine sanctuary in the Scarborough Shoal. This is the area where confrontations between China and the Philippines commonly take place. This action was thought to be the first step in truly claiming the West Philippine Sea by restricting other nationals in the Philippine Exclusive Economic Zone. However, this approach did not materialize and the administration sought to enforce more reconciliatory actions in dealing with China.

Duterte's administration takes any opportunity it can get to secure favorable deals with China even if it means setting aside the Arbitration Award. When Duterte visited Beijing in 2016, China pledged US\$ 24 Billion worth of infrastructure investments and business deals. Duterte also focused on good relations with China and cultivate a relationship that would bring in infrastructure and joint developments between China and Philippines including offshore petroleum resource projects that can be funded by China.

President Duterte initiated a bilateral approach to keep the negotiations purely between the diplomatic countries of China and the Philippines. The Duterte Administration does not fully neglect the Arbitration Award because it still strongly observes the sovereign rights of the Philippines in its exclusive economic zone especially when it comes to the terms and conditions in potential joint development programs. The bilateral approach builds more confidence and mutual trust between two countries. A Philippines-China Bilateral Consultation Mechanism (BCM) convenes regularly to discuss both sides of the disputes in

the West Philippine Sea. In this approach, Duterte decided to set aside the Arbitration Ruling Award and political differences on the South China Sea issue.

The Bilateral Consultative Meeting is a bilateral procedure preferred by China to peacefully manage the conflicts in the South China Sea, specifically the West Philippine area. It was commenced in May 2017 and had already conducted five meetings attended by respective delegates. The most recent meeting highlighted the importance of complementary bilateral and multilateral approaches in resolving the dispute. The multilateral platforms through the ASEAN-China Dialogue Relations, the ASEAN Regional Forum, and the East Asia Summit are mainly for regional peace and stability. Both countries also expressed their commitment to the implementation of the Declaration on the Conduct of Parties in the South China Sea and the conclusion of a Code of Conduct in the South China Sea ("Joint Press Release: Fifth Meeting of the Philippines-China Bilateral Consultation Mechanism on the South China Sea", 2019).

Although the BCM is considered progress and development in the peaceful management of disputes, it still has many limitations. It is not an official bilateral procedure but only a forum wherein parties can openly discuss their sides and situation in the disputed territories. The agreements concluded in the meeting are also limited in scope and cannot go beyond those areas where other claimants are involved. Hence, the implementation and cooperation are problematic in other areas. The BCM also cannot bind external and regional powers and cannot be implemented if one party has an existing agreement with outside powers that do not agree with the terms and conditions (Banlaoi, 2021). Thus, the BCM is not a guaranteed resolution and is heavily constrained by regional factors and external political powers.

President Duterte Administration's Position

President Rodrigo Duterte downplayed the Award and intended to maintain a friendly approach towards China despite winning the Award. President Duterte boldly declared its intention to separate from the United States of America when it comes to its military arrangements when he attended the Philippine-China Trade and Investment Forum in Beijing in 2016. Duterte also remarked that the Award and diplomatic win of the Philippines was just a 'piece of trash paper with four corners.' Duterte refused to give formal statements in the ASEAN during his chairmanship in ASEAN in 2017.

The administration of President Rodrigo Duterte considers the arbitration ruling as a legal approach to dispute settlement which only clarified important aspects of the South China Sea dispute. It may have been favorable for the Philippines but its administration decided to set aside the Award due to the inherent limitations of the Award itself.

First, it considers the arbitration as a legal approach that does not bind China because both China and the Philippines did not previously consent to a permanent court. The case was decided by an arbitral tribunal which is less authoritative than a permanent court. The arbitral tribunal is strategic because it allowed proceedings to continue without China's participation but its authority and jurisdiction are limited (Ibarra, 2018). Rulings rendered by an Arbitral Tribunal have finality but a permanent court would be more convincing if both parties have given consent to such arbitration.

Second, the administration believes that enforcing the Award is adversarial because China did not give its consent (Ibarra, 2018). Even though arbitration as a legal approach is a peaceful way of settling disputes, it may still cause damage to the bilateral relationship of both countries. Insisting on the legal approach would also mean taking actions to continuously prevent conflicts and tension from escalating which is more costly and challenging for the Philippines. The Philippine administration is not in the best position to

simultaneously manage a bilateral relationship and at the same time prepare for any armed repercussions from imposing the arbitration ruling.

Third, a favorable ruling cannot compel a State to comply with any decision even if it came from a tribunal with jurisdiction. This is part of the sovereignty that every nation possesses. Enforcing the ruling in the absence of one party's willingness may be done through other means that can cause further conflict. The Philippines tries to prevent another conflict or confrontation so it sets aside the arbitration ruling. Compliance with international laws begins with a regional environment wherein all parties give their willing consent and choose to participate in any negotiations or proceedings.

Finally, the arbitration ruling did not resolve the disputes because it only settled questions of maritime entitlements. The rejection of the ruling by China is highly respected for mutual trust and confidence (Ibarra, 2018). The Award is a means and a step to settle the territorial disputes in the West Philippine Sea but political factors must also be considered in managing conflict. The legal approach and the Arbitration Award are not enough to resolve the issues. It may have put the Philippines at advantage and have clarified the legal status of the disputed features but it only remains as a legal standpoint without China's voluntary compliance.

China's Response

China did not just formally express its non-acceptance and non-acknowledgment of the Award. It also demonstrated continued advancements in the West Philippine Sea. China has even increased the tensions in the West Philippine Sea on several occasions. Chinese vessels and personnel continue to maintain their presence in the West Philippine Sea and the exclusive economic zone of the Philippines. Some of the incidents are as follows:

- (1) China fired warning shots against Filipino fishermen to drive them away and prevent them from fishing in the Union Bank (Yap, 2017);
- (2) The dangerous stand-off in Sandy Cay (Valencia, 2019);
- (3) Disruption of supply operation of the Philippines to Second Thomas Shoal (Acosta, 2021);
- (4) Unauthorized research vessels and marine scientific research by China in the area of Palawan and Reed Bank (Nepomuceno, 2021);
- (5) Deployment of hundred of Chinese maritime militia ships around the Spratly Islands ("Chinese Maritime Militia Threatens South China Sea Order: US Think-Tank", 2019);
- (6) Harassment of Filipino fishermen by Chinese Coast Guard ("Filipino fisherman recalls being blocked by China Coast Guard ship", 2021)

Despite the friendly approach of the Duterte Administration in hopes of gaining some economic benefit for the country, the Chinese government simply does not regard this intention. The security and order in the West Philippine Sea are still at stake. Even Chinese President Xi Jinping encourages Chinese locals to conduct fishing activities further south of the South China Sea to assert their sovereign rights outside of their jurisdiction. Numerous attempts to disrespect the Award and not recognize Philippine sovereignty through violent actions that may lead to confrontations are even initiated by China. China continuously defies the Arbitration Award and the international laws by showing more aggressiveness in the South China Sea through its unlawful expansion and operations (Bengali & Uyen, 2020).

China's Land Reclamation and Expansion

One of the biggest threats to the Philippines' maritime security is China's land reclamation and expansion activities in the South China Sea, especially those that take place in

the West Philippine Sea. These activities are signs of control over the disputed territories and pose danger to the safety of Filipino locals and fishermen. Most of all, China's land reclamation and expansion activities are serious threats to the maritime security of the Philippines and other neighboring states.

On May 18, 2018, it was reported that China has built infrastructure on Woody Island. This island is one of the disputed territories in the Paracels. This used to be a remote island and was once a remote outpost but China has developed the area into a bustling hub. It now has several infrastructures including a port, public housing, school, airport, and other facilities. Woody Island serves as a surveillance station for China. Fighters and bombers are particularly deployed on the island for additional protection of the military bases of some neighboring islands. The watery region has already become a militarized area but with normalized civilian dwelling and activities.

Woody Island is not claimed by the Philippines. It is mainly disputed by China, Vietnam, and Taiwan. However, this assertive behavior is made to increase Chinese presence in contested areas. Infrastructures in Woody Island are also alarming because there video footages that showed that H-6 aircraft lands and takes off on the island. Such bombers could reach through other areas in the South China Sea and even nearly all of the Philippines ("China Lands First Bomber on South China Sea Island | Asia Maritime Transparency Initiative", 2018).

China has also massive land reclamation and constructions in the Spratly Islands including Johnson South Reef, Cuarteron Reef, Gaven Reef, Fiery Cross Reef, Subi Reef, Mischief Reef, and Hughes Reef. It is not clear as to when constructions in the Spratlys started but it is believed that operations began as early as the year 2010 to 2012. Land reclamation is a broad effort by China but the speed of the installation of facilities varied and was done in rotating areas. China is enhancing greater control in the West Philippine Sea for each installation that it puts whether for military or civilian purposes.

China's land reclamation and installation of infrastructures in the West Philippine Sea and nearby disputed territories should not be taken lightly because such actions are not just for civilian purposes. The military presence of China in disputed islands and maritime features is very substantial. These activities are ways of strengthening sovereignty claims and enhancing military power. This will put the Philippines at an immense disadvantage because China has rapidly enhanced its presence in the West Philippine Sea. This could also affect the international community beyond the South China Sea because it can potentially impinge on the security and freedom of international navigation.

Chinese Illegal Fishing and Other Unlawful Activities

China's non-acceptance of The Hague Arbitration ruling was somehow not surprising given China's stand on its historical claim. The international community and the Philippines may have hoped that the ruling might put pressure on China to comply or at least refrain from conducting unlawful activities in the West Philippine Sea until a final settlement between the two countries can be agreed upon. However, the behavior of China has shown to be more aggressive and non-compliant after the arbitration. Chinese fishing activities within the Philippine Economic Zone have increased and unlawful activities have been reported more often.

Chinese fishermen and fishing vessel continues to conduct fishing activities within the Philippine economic zone even without permission from the Philippines. These practices are even tolerated by Chinese law enforcers. The most worrying part is the overcapacity of fishing activities in the Spratlys conducted by China. Hundreds of Chinese fishing vessels extract fish and other marine resources at Mischief Reef and throughout the Spratlys daily ("Illuminating the South China Sea's Dark Fishing Fleets | Asia Maritime Transparency Initiative", 2019). This is even supported and supervised by Chinese coast guards and military personnel.

The failure of the Chinese officials from preventing their fishermen and vessels to conduct unlawful fishing activities in the West Philippine Sea has caused enormous damage to the marine environment. Chinese officials tolerated the illegal harvesting of endangered species in the Spratly Islands. The large-scale extraction of endangered giant clams destroyed more than 25,000 acres of coral reef ("Failing or Incomplete? Grading the South China Sea Arbitration | Asia Maritime Transparency Initiative", 2019). The destructive activities of harvesting clams, coral reefs, and other endangered species at Scarborough Shoal and Paracels are often done under the attention and protection of Chinese coast guards without reprimand by them.

The Chinese government has been very defiant of the arbitration ruling and the UNCLOS provisions. It even imposed a fishing moratorium in the South China Sea, including the West Philippine Sea. This means China is banning or restricting non-Chinese fishermen and vessels from fishing in the South China Sea covering waters north of the 12th degree of latitude which covers large sections of the exclusive economic zones of Philippines and Vietnam.

These unlawful activities are not just non-compliance with the Arbitration Ruling. These are also clear violations of the provisions of the Convention. The protection and preservation of the marine environment is part of China's obligation to the Convention with or without any ruling from the arbitration. Chinese fishermen and vessels with the tolerance of Chinese coast guards and military are illegally damaging the marine habitat and environment. These illegal activities are still being done without prevention from the Chinese government.

ASEAN's Position

The Association of Southeast Asian Nations was established on August 8, 1967, through the signing of the ASEAN Declaration. It started with ASEAN-5 which includes Indonesia, Malaysia, the Philippines, Singapore, and Thailand. The ASEAN was created

with the objectives and principles of mutual respect for sovereignty, territorial integrity, equality, and national identity of all nations; non-interference of the internal affairs of the member countries; peaceful settlements of disputes; renunciation of the use of threat or force; and cooperation among each other. It has been a promoter of peace, stability, cooperation, and security in the region. Although the South China Sea is a complicated issue, this presents an opportunity and challenge for the ASEAN to help resolve since this is essentially a regional security issue involving ASEAN states.

The ASEAN Charter requires the organization to present a common position when dealing with external powers. The Charter provides for the ASEAN to develop common positions and pursue joint actions in the conduct of external relations (Article 41 (4), ASEAN Charter). With the South China Sea, although not all members of the association are active claimants, it should be part of ASEAN's pursuit to issue a joint statement or position to express solidarity and unity.

ASEAN's Statement

The common position of the ASEAN should be incorporated in the association's statements through the foreign ministers and executive heads of the members. However, ASEAN itself is noticeably avoiding making comments on China's position in the South China Sea conflict. ASEAN foreign ministers and leaders have frequently called out China's militarization and construction of artificial islands in the region but these are somehow limited to concerns over the activities and not really on the main issue of sovereignty and territorial disputes.

No Official Statement in China-Vietnam SCS Military Attack

The South China Sea territorial disputes involving many ASEAN states have been a major issue that concerns ASEAN even before the Philippines filed for arbitration. Before the 1990s, the South China Sea dispute was perceived as mainly between China and Vietnam because of the attacks when China seized the Paracels from Vietnam. China took the Paracels through military force which killed Vietnamese soldiers and sank Vietnamese ships. ASEAN did not issue an official joint statement regarding the incident but it recognized the use of force as a threat to the peace and stability in the area.

1992 Declaration on the South China Sea

ASEAN changed its approach in the South China Sea dispute in 1992. The territorial disputes in the South China Sea and activities of China in the area were tackled as a regional security issue in the 4th ASEAN Summit in January 1992. This was the first-ever forum discussion regarding the South China Sea territorial dispute. ASEAN officially declared condemnation of China's military attacks and unlawful claims and activities in the region. In the same year, ASEAN ministers adopted the Declaration on the South China Sea which signified ASEAN's joint position regarding territorial disputes.

The Declaration was jointly established by the ASEAN foreign ministers. The objective of the Declaration was to jointly issue a statement on the necessity to resolve territorial and sovereignty issues concerning the South China Sea through peaceful means and by restraining the use of force or arms. It was a collective position from the members in maintaining peace and stability in the region and condemning any use of force. It was also a response to the increased tensions in the South China Sea and reflected ASEAN's commitment to developing measures to address regional security issues.

The 1992 ASEAN Declaration signified ASEAN's support for its members including the Philippines. This also confirmed ASEAN's solidarity in dealing with the regional security issue. Through the Declaration, ASEAN asserted its role in the region.

ASEAN also actively responded to China's construction in the West Philippine Sea (the South China Sea, specifically Mischief Reef) in 1995. China built structures in Mischief Reef and the Philippines failed to regain Mischief Reef. The Philippines sought help from ASEAN to diplomatically resolve the issue. After the incident, ASEAN issued a joint statement on the concerns of China's construction and call for both parties to refrain from taking further actions. This was the second time that ASEAN issued a joint position regarding the issue and expressed solidarity in its actions to resolve the South China Sea dispute.

2002 Declaration on Conduct of Parties and Six-Point Principles

The South China Sea was relatively calm following ASEAN's Declaration and joint position. China also had been in dialogues with ASEAN as they exchanged communication for the proposed Code of Conduct. However, there were several underlying factors which made it impossible for them to finalize a Code of Conduct. They were only able to come up with a Declaration on Conduct of Parties in the South China Sea (DOC) in 2002.

The DOC was thought to be the beginning of resolving maritime disputes without the use of force and increase in tensions. It also allowed disputing states to enter into joint developments in the South China Sea. There was seen cooperation between the countries as they entered into agreements of joint oil exploration while setting aside territorial disputes. There was a picture of a stable environment for negotiations and joint developments for the countries involved with the active participation of ASEAN.

Despite the DOC, China still became more assertive in its claim as it increased its military presence in the South China Sea. China continued to implement policies on maritime

law enforcement. China also submitted its nine-dash claim to the United Nations which formally confirmed its territorial claim in the South China Sea. China also became more aggressive and confrontations took place as China interfered with Vietnam and the Philippines by restricting Filipino and Vietnamese fishermen and vessels from conducting activities in their respective claimed territories. As a result, Vietnam began to increase its defense program through military expenditures while the Philippines enhanced its defense treaty with Japan and the U.S.

The South China Sea dispute was dealt with again in ASEAN meetings. ASEAN criticized China's actions. However, the various interests of ASEAN members made it difficult for ASEAN to come up with a joint position and communiqué. There were already internal and external political pressures that dented ASEAN's solidarity and unity.

Despite the questionable status of ASEAN's joint position, they were able to come up with a joint agreement through the Six-Point Principles on South China Sea Dispute. The six-point principles embody the fundamentals of ASEAN's common position on the South China Sea issues. Although limited, this is still the best collective position of ASEAN and its centrality in the South China Sea dispute. The six-point principles are considered as the third issued joint position of ASEAN and signified the most authoritative statement of ASEAN in the South China Sea issues.

ASEAN Position on the Arbitration Ruling

ASEAN is now seen as an organization whose position in the South China Sea dispute is collective but narrow and fluctuating. Agreements among members may be reached but there is no strong consensus of common position as a solid ASEAN. However, analysis shows that ASEAN used to have a strong stance against China's militarization and

provocative activities in the South China Sea. ASEAN fully supported the Philippines against China in 1992 and 1995 by issuing statements of common position.

The arbitration ruling was not just a significant decision for the Philippines but also for most of Southeast Asia. A lot of observers keenly waited for ASEAN's response and joint position on the matter. There were high expectations that ASEAN would mention and discuss The Hague Ruling in their meetings. However, even after ASEAN's special meeting, ASEAN members failed to come up with a joint position and refused to issue a public release of official statements regarding the ruling. It was confirmed that the Philippines pushed for the arbitration award to be included in the ASEAN joint statement. However, no reference was made regarding the Award because of the lack of consensus of position and a joint statement on the Award.

The ASEAN members were also divided in their position on the arbitration ruling. Three days before the Award was released, Cambodia expressed refusal to join in any ASEAN joint position on the ruling. Malaysia also withdrew its endorsement to release a joint statement on the ruling. ASEAN even deliberately chose not to mention the Award and omitted the arbitration in its joint statements in meetings that took place after the Award was rendered. The only response that can be obtained from ASEAN is its concerns about land developments in the South China Sea and the increased tension in the area (Paragraph 174, AMM 49).

There was no definite ASEAN position on The Hague Ruling or Arbitration Award. However, the lack of a joint position or statement regarding the Arbitration Award does not mean that ASEAN lost its position in the South China Sea dispute. ASEAN's common position in the dispute is focused on dispute management and confidence building through peaceful processes. ASEAN remains to be an advocate of its objective in maintaining peace

and stability in the region. Still, the failure to issue a joint position regarding the Hague Ruling indicates a weak stance of ASEAN on the matter.

CHAPTER IV – MOTIVATIONS FOR SETTLEMENT

Sovereignty

Territorial disputes are not merely issues on borders and space. These disputes come from more serious implications on the sovereignty of a nation. Both countries are unwilling to give up their claim on the West Philippine Sea and are firm on their sovereignty claim in the area. Sovereignty cannot be shared: “Each state either has complete sovereignty over a certain piece of land or not at all” (Harrison & Boyd, 2018).

Sovereignty is not just a matter of claiming the respective territory but it also involves excluding others from the interests and rights on the territory. Countries practicing their sovereign rights in their territories also seek to align their policies and jurisprudence with the international laws and policies that may affect territorial boundaries and immigration policies. A sovereign state has a right to restrict others from enjoying certain areas without legal permission. Thus, delineating boundaries becomes a necessary condition to be able to exercise sovereignty within territorial jurisdiction (Besson, 2011).

Both China and the Philippines insist on their sovereignty in the West Philippine Sea but each country exerts different levels of sovereign control. China has expressed and urged the Philippines to respect China’s sovereignty, rights, and interests in the South China Sea in response to the Philippines’ maritime exercise conducted in the West Philippine Sea (“China urges PH: Respect our sovereignty and rights, stop drills in the South China Sea”, 2021). This is despite the arbitral tribunal ruling in The Hague in 2016 favoring the Philippines’ rights and claim in the area.

China is more aggressive in its approach as evident in how they exert their presence in the entire South China Sea against all claimant countries and the international community. China recently issued a law that authorizes the Chinese coast guards to fire weapons at

foreign vessels intruding in its claimed territory (Tian, 2021). China has created an atmosphere of intimidation in the West Philippine Sea and the entire South China Sea. This is how they exert their sovereignty with prejudice to other nations.

The Philippines' approach to protecting their sovereignty in the West Philippine Sea is less aggressive than China's. The country deployed more patrol groups and coast guards in the area to maintain its presence. However, the Philippines clarified its position to abstain from the use of force and violence. Instead, the country insists that the increased visibility is for the protection of the maritime interests and the safety of the locals and Filipino fishermen ("Unmoved by China's new law, Philippine military asserts sovereignty in West Philippine Sea", 2021).

Sovereignty is important for nationalism and the protection of economic rights and peace and security within the national territory. The main mandate to protect the West Philippine Sea is based on the country's sovereign right and sovereign obligation as established in the Philippine Constitution. Protecting the West Philippine Sea means upholding Philippine sovereignty as mandated by the Philippine Constitution per international laws.

International Laws

International laws are the fundamental cornerstone for international peace and security among nations and states regardless of their differences in power and influence. International laws provide a system for the peaceful cooperation and coexistence between states for protection of all humanity. They are not just established to resolve wars and disputes but they function to prevent conflicts and disagreements among parties. However, when conflicts occur, international laws serve as an instrument for resolution and objective arbitration.

The late Philippine President Aquino III stated that “rules and norms anchored on international law are fundamental in promoting trust and confidence among nations, and in ensuring stability and peace in the international community.” (“President Aquino Calls for Adherence to Rule of Law to Ensure Peace and Stability in the South China Sea”, 2017) Even before the tribunal decisions were given, the government of the Philippines has expressed respect on whatever the outcome may be as a country that honors its commitment to international laws. The Philippines believes in the rule of law as a just and peaceful means of resolving differences, as a party to the convention, and as a sovereign nation that respects other sovereign states.

The Hague Convention ruling in favor of the Philippines is a legal victory not just for the Philippines but for all nations who seek to honor international laws and seek the notion of peaceful dispute resolution. The tribunal has no enforcement powers but the ruling is legally binding on both China and the Philippines. China, a signatory to the convention, rejected the ruling expressing that the ruling is null and void because the arbitration body has no jurisdiction over maritime disputes in the South China Sea.

Despite its win and the respect for international laws, the Philippines has not exercised many gains from the ruling except for moral authority in the face of the international community. China still claims the West Philippine Sea and exerts control in some areas with great intimidation. This challenges the Philippines’ commitment to international laws and regional stability because the approach in the implementation of The Hague Ruling seems ineffective.

Customary practices of states are authoritative under international law. National and international actions in under the ruling represent an affirmation of the ruling’s legitimacy with or without express acknowledgment to that effect (Morales, 2019). The hesitancy to exercise more effort in implementing the arbitral ruling is understandable because of the

attempt to prevent confrontations and the use of force. However, there must be visible practices of upholding the ruling as part of the commitment to international laws. Local and national practices are important in showing the international community the intention to respect the rule of law.

As China uses more coercive efforts to suggest its rights in the West Philippine Sea, the Philippines must be emboldened with the fact that their customs and practices are in line with their sovereignty that adheres to the international laws. Non-violent measures of law enforcement and application of The Hague ruling will help keep the Philippines' credibility in the international community. It will also encourage other claimants in the South China Sea to resort to diplomatic and peaceful arbitrations in dealing with territorial disputes.

Economic Significance

As an archipelago nation, the Philippines relies heavily on its water resources for a lot of economic activities. The West Philippine Sea comprises roughly one-third of the entire water area of the Philippine territory making the West Philippine Sea integral for the economic survival of the Philippines. The area contains rich marine and mineral resources that are yet to be exploited and can offer significant economic returns for the entire country.

Fish Production and Food Security

Fishing is one of the major livelihoods of many citizens in the Philippines, especially those living in the coastal areas. The West Philippine Sea is a coral-rich territory that provides a thriving ecosystem for the country's diverse marine species and organisms. It is home to approximately 4,640 square kilometers of coral reefs which is about 30% of the total reefs of the Philippines (Arceo et al., 2020). This is also the largest coral reef area in the South China Sea. This area is not just a major fishing ground for many Filipino fishermen but

is also a fish breeding site for many fish larvae and other marine species. Of the 4,640 square kilometers of coral reefs, about 1,000 square kilometers are found in Kalayaan Island Group (Baveria & Batongbacal, 2013).

Fish production and other fishing activities are very dependent on the presence of coral reefs in the West Philippine Sea. Coral reefs and the marine ecosystem that this support are critical in providing food and livelihood and can directly affect the fish production value of the country. Reef fisheries in the Philippines have been estimated to make a direct contribution of 15%–30% to the national municipal fisheries production (Aliño et al. 2004). Each year, the country’s fish production is more than 4 million metric tons.

The Volume of Fisheries Production by Subsector: Philippines, January to December 2018-2020

Subsector	Volume of Production		
	2018	2019	2020
Commerical Fisheries	946,437.62	931,451.05	978,170.98
Marine Municipal Fisheries	941,870.86	968,758.60	951,468.29
Inland Municipal Fisheries	164,200.98	156,458.87	150,073.74
Aquaculture	2,304,365.31	2,358,333.16	2,323,996.07
Total	4,356,874.77	4,415,001.68	4,403,709.08

Source: Philippine Statistics Authority

The fishing industry is also a highly profitable industry that contributes significantly to the overall income of the country, with about 1.5% to 2.2 % contribution to the country’s gross domestic products. This sector also employs almost 1.5 million people around the country (Arceo et al., 2020). In the year 2020, the country produced 4,403,709.08 metric tons of fish. The production value of this fishing is about 273.5 billion pesos or about USD 5.4 billion.

The West Philippine Sea plays a significant role in the fish production of the country. According to the Philippine Bureau of Fisheries and Aquatic Resources (BFAR), about seven percent of the output in fish production comes from the West Philippine Sea. This is estimated to be over 300,000 metric tons of fish annually. More than 600,000 Filipino fishermen are dependent on the West Philippine Sea fishing for livelihood.

With this much production, fish is considered an essential food for most Filipinos. 22.4% of the total protein intake for an average Filipino consists of fish (Arceo et al., 2020). There is no exact record of the actual fish production that is directly consumed by the local community in the region for subsistence. However, it is estimated that subsistence fishers and municipal fishers are almost equivalent. This means local communities also rely on the fish resources in the West Philippine Sea for food security wherein the average value of fish consumed at home is estimated to be 22% of food thresholds. The economic contribution of subsistence fisheries or its impact on food security should not be ignored.

The contribution of fisheries and aquaculture in the West Philippine Sea to the national economy of the Philippines is very significant. It adds value to the gross domestic products, the export value of fishery products, and contributes to employment. The estimated contribution does not yet largely account for the fish captured by the fishermen for subsistence. The dependence on the West Philippine Sea of locals for their livelihood and household income is also consequential in protecting the territory.

Oil and Mineral Resources

The West Philippine Sea is perhaps disputed because it is rich in oil and natural gas. The U.S. Energy Information Administration estimates the entire South China Sea to contain approximately 11 billion barrels of oil and 190 trillion cubic feet of natural gas in proved and probable reserves. Satellite images and recent explorations indicate that the West Philippine Sea is probably holding the most oil and gas deposits in the region (Arceo et al., 2020).

Estimates of oil and gas based on US Geological Survey

Total Petroleum Systems (TPS) and Assessment Units (AU)	Field Type	Largest Expected Field Size	Average Total Undiscovered Resources		
			Oil (MMBO)	Gas (BCFG)	Natural Gas Liquids (MMBNGL)
Dangerous Grounds- Reed Bank AU- Miocene TPS	Oil	703	2,522	10,370	197
	Gas	4,217	N/A	15,147	881
Palawan Shelf Province - Eocene- Miocene Reservoir	Oil	101	270	179	6
	Gas	514	N/A	1,229	38

BCFG = billion cubic feet of gas; MMBNGL = million barrels of natural gas liquids; MMBO = million barrels of oil

Source: "Assessment of Undiscovered Oil and Gas Resources of Southeast Asia, 2010," US Geological Survey, accessed January 22, 2013, <http://pubs.usgs.gov/fs/2010/3015/pdf/FS10-3015.pdf>

Even with its not yet fully explored status, it is estimated to contain about a few billion barrels of oil and gas and trillions of cubic feet of natural gas underneath the sea. These estimates of oil and gas resources should not be taken lightly because many nations have been searching continually for energy sources due to high energy demand and depleting the supply of non-renewable energy resources.

Estimates of hydrocarbon resources in Reed (Recto) Bank based on Weatherford Petroleum

	Resource Type	Best Estimate
Gross Prospective Resources	Gas	8.799 TCF
	Oil	220 MBO and liquids in place
Gross Contingent Resources	Gas	4.598 TCF
	Oil	65 MBO and liquids in place

TCF = trillion cubic feet; MBO= million barrels of oil

(Source: "Recto Bank sitting on 16T cubic feet of gas," Business Mirror, April 26, 2012, pg. A1-A2)

The economic growth of most countries in the Asia-Pacific has tightened the supply situation for oil and gas resources. China, in particular, is actively searching for oil fields so it can meet its oil demands. During 2012, China's domestic oil production only consists of 40% of the country's entire consumption (Arceo et al., 2020). China is the world's second-largest oil importer so energy security is one of their major economic concerns. The oil demand of China is also expected to grow by 3.4 percent each year which will result in an expected 15.3 million barrels per day by 2030 ("International - U.S. Energy Information Administration (EIA)", 2022). This means China will rely on oil imports for almost 80% of its oil consumption in the next few years.

Meanwhile, the Philippines has relatively low energy consumption compared to its neighboring countries but it still imports significant supply for its oil and energy resources. The Reed Bank, claimed by China in its nine-dash line but falls within the exclusive economic zone of the Philippines, is believed to hold large reserves of oil and natural gas. The country gets 20% of its power source from Malampaya, the deepwater gas to water power located in the West Philippine Sea. However, the Malampaya natural gas field is at a critical level and is projected to run dry by the year 2027 (Baveria & Batongbacal, 2013). The Reed Bank has unexplored hydrocarbon stores which could potentially solve the country's electricity and oil problems. It may also be possible that the combined oil and gas resources in the West Philippine Sea can cover the total fuel demand of the Philippines for the next two decades.

Materializing and commercializing the gas reserves and hydrocarbon stores in the West Philippine Sea would mean the huge economic potential for the Philippines. Developing these potential gas resources can yield additional revenues for the country. It can also help the country save from energy importation expenses which are about US\$ 500 million per year.

The Kalayaan Islands Group in the West Philippine Sea is rich in mineral resources. The islands are known to be rich in phosphates, guano deposits, manganese nodules, cobalt, nickel, and molybdenum. Other potential mineral of economic value present in the area also includes gold, tin titaniferous magnetite, zircon, monazite, phosphate, quartz sand, and chromite sands (Baveria & Batongbacal, 2013). These mineral resources have economic value that can increase national income and also boost the mineral industry of the country.

Oil and natural gas are not just ordinary commodities. These are highly valuable consuming goods in the global market. An ample supply and source of oil and gas reserves is also a strategic commodity for a country's national and economic interest.

Economic Uncertainty

Territorial disputes in the West Philippine Sea pose significant economic uncertainty. First, the uncertainty on the claims of different parties can cause ambiguity on the rules and legal policies that can be applied especially during cross-border transactions. Countries are also more likely to continually change their policies depending on the status of the disputes in the area. For example, tariffs on goods can be affected and agreement terms may prove to be unstable if countries continue to assert different rights over the same area.

Trading can also decline if the disputes are left unresolved for a longer time. For instance, Chile and Argentina had a cumulative foregone trade value of almost USD 33 billion during their territorial dispute from 1950 to 1995 (Mendoza & Siriban, 2015). These estimated costs included military spending which could have been spent and earned through peaceful trading in the absence of territorial disputes. Marine resources that could be a source of economic income are also at the risk of detriment and underdevelopment associated with the uncertainties of territorial disputes.

Status of Fishery and Other Economic Resources

The majority of fish stocks and resources in the West Philippine Sea are considered to be most fully exploited. There is also continuous decline in fish harvest in the area over the years. Reef fisheries in the Philippines have been estimated to make a direct contribution of 15%–30% to the national municipal fisheries production (Aliño et al. 2004). The disputes in the area make it more challenging to implement environmental preservation and management policies of marine resources.

The building of artificial islands by the Chinese in the West Philippine Sea is also damaging the coral reefs in the area. Damaged reefs in the Panatag Shoal and Spratlys are estimated to be almost 2,000 hectares. This greatly affects the fish production and supply in the country. The damage also costs approximately USD 660 million a year. Even if the Philippines will lawfully allow the Chinese fishermen to fish in the West Philippine Sea or the exclusive economic zone of the country, fish resources will quickly deplete because of the large fish demand by China.

The livelihood of some fishermen is also affected due to harassment from Chinese authorities. There were reports that Filipino fishermen are sometimes denied entry to Scarborough Shoal by Chinese men and fishing grounds where they can safely conduct fishing activities have been narrowed. Due to these instances, some fishermen have discontinued fishing and shifted to other means of livelihood such as hog-raising. This puts fishing production and other fishing activities at risk to decline in the next few years.

There are even more activities by the Chinese men in the West Philippine Sea that are left unchecked by the Philippine government. There are reports of illegal harvesting of giant clams, reclamation of artificial islands, fish poaching, and many more. While the Philippines has not yet exercised its full rightful claim and sovereignty in the West Philippine Sea, it will

not be able to fulfill its obligation in protecting the marine resources and local citizens and fishermen in the area.

The majority of the civilian population in the coastlines of the West Philippine Sea lives by means of fishing and aquaculture. The area also has potential for other livelihood activities such as tourism and other developments that can help bring economic progress to the area. It can also enter into contracts with private institutions or other states for joint development, especially oil exploration, in the area. However, the resistance of other claimants in the area prevents the realizations of these projects and developments.

The disputes of other claimants in the West Philippine Sea limit the ability of the Philippine government to guard the rich marine resources in the territory including the coral reefs in the area. Unless well protected, reefs and fisheries in the West Philippine Sea will continue to be exposed to unregulated threats and damages (Arceo et al., 2020). The task of protecting and defending the natural resources of the nation in its territory and exclusive economic zone is very challenging because of the tension in the region. However, the need to fully protect the West Philippine Sea is urgent because of the increasing habitat degradation and overexploitation of marine resources.

Maritime Security Implications

Maritime security is a major concern for most archipelagic nations and coastal states. It encompasses the protection of vessels that pass through the territorial waters and marine boundaries and the proactive procedures to supervise, inspect, and eliminate all kinds of threats and intrusion by outsiders. Maritime security involves several factors including, (1) international, regional and national peace and security, (2) sovereignty, territorial integrity, and political independence, (3) Sea Lines of Communication (SLOC), (4) the principle of freedom of navigation, (5) security protection from crimes at sea, (6) resource security,

access to resources at sea and the seabed, (7) environmental protection, as well as, (8) security of all seafarers and fishermen (Bersick, 2015). All of these elements are affected by the maritime and territorial disputes in the West Philippine Sea.

Any perceived threat to maritime security may pose dangers to the national territory and security. For archipelagic nations like Indonesia and the Philippines, maritime security measures are even harder to implement because of their territorial configuration wherein islands are greatly fragmented and a large part of the oceans makes it challenging to exercise control over their territories. For this reason, archipelagic nations must be more assertive about their rights to maritime zones and formally clarify their respective borders according to accepted international laws to exercise the appropriate span of control over their territory.

The West Philippine Sea is a strategic sea lane that is globally needed for trading as much of the world's trade passes through it. The entire South China Sea is a route for about \$5 trillion worth of goods from all over the world, including millions of tons of oil transported and imported by most Asian countries (Mendoza & Siriban, 2015). It is also a military defensive route because it can potentially prevent colonizers or invaders from entering directly into the countries near the region (Bersick, 2015). Thus, any overlapping maritime and territorial claims in the West Philippine Sea can potentially disrupt the peaceful and orderly navigation of goods and services in the region and can affect global trading.

Territorial rights also determine maritime jurisdiction and airspace access. Thus, nations are wary of any claims that have no legal basis or are based on ambiguous titles and rights. Territorial and maritime disputes are a source of tension among concerned states and countries. Various studies find evidence that maritime disputes can lead to military confrontations (Mendoza & Siriban, 2015). Maritime security in the Philippines is paramount to national and territorial integrity. The country's geographical location and setup and history of foreign invasion make the country vulnerable to intrusion from the seas. The West

Philippine Sea is vital to the national integrity and maritime security of the Philippines. As the country struggles to protect its territories against illegal activities, it is also fighting to maintain its presence in the disputed territories to safeguard the territories in the West Philippine Sea.

Any disputes in the maritime boundaries and territories in the West Philippine Sea are not just threats to the peace and national security of the country. These are also threats and dangers to the country's economy and development, environment, marine resources, and foreign and local policies. The West Philippine Sea is not just a maritime resource that enriches the economy but it is also part of the national identity of the country that is crucial for peace and stability. With China's growing power and increased militarization in the West Philippine Sea, the Philippines will always be in a maritime security dilemma. Safeguarding the territories and boundaries in the West Philippine Sea is part of the national interest of the country but national economies affected by international relations should also not be neglected in the maritime policies.

Threat of Security in the West Philippine Sea

Even with peaceful negotiations and agreements, states involved in territorial disputes will always have security dilemmas. States will tend to secure themselves and may make military power part of their top priorities when there are international territorial disputes. Military competition may not be alarming but not maintaining military power will put a state at the disadvantage of a security dilemma. Each state also has different ways of coping with this threat and dilemma. The more developed nations, such as China, can increase expenditures to strengthen their military power. Weaker nations, such as the Philippines, also need to survive so they will naturally resort to forming alliance with a stronger state like the United States.

For many years, the South China Sea has been a setting of many confrontations. Chinese vessels and coast guard ships of other nations, including Vietnam and the United States have engaged each other in the area. Even after the Tribunal has clearly declared that China's claim has without legal basis, China still asserts its rights and even increased its offensive and defensive military presence in its claimed territories. The tensions in the South China Sea remain high and the threat of confrontations among claimant states is still inevitable.

Confrontations between China in the Philippines in the West Philippine Sea also occurred on several occasions. Chinese navy officers blocked Philippine Marine son the Second Thomas Shoal. Chinese coast guards also prohibited Philippine fishermen from peacefully fishing in the traditional fishing grounds of the Scarborough Shoal.

China has a history of using arms and forces to assert its territorial and maritime claims. China was able to gain control in the Paracel and Spratly Island after it clashed against Vietnam in 1974 and 1988. China also coercively seized Mischief Reef and Scarborough Shoal from the Philippines. From these confrontations, China collided with opposing states and damaged vessels of other nations. It has also continually evicted fishermen of other nationalities while threatening the safety of locals and residents.

The incidents that occurred have so far been considered as small-scale military conflicts and will not likely develop into more serious confrontations. The nature of these confrontations is more on blockades and restraining opposite parties from further entering areas in the waters. Violent repercussions are not likely to happen but should also not be taken lightly because these incidents remain to be threats to maritime security and freedom of navigation in the West Philippine Sea. The scales of the confrontations are small risks but the frequency of incidents has increased. Although both parties are more restrained than not, any form of confrontation between claimant countries can still ignite military conflict. China's

territorial claims in the West Philippine Sea and the entire South China Sea can still morph into a military conflict which can critically jeopardize Philippine maritime security.

Strengthening the Philippine Maritime Security

The South China Sea is considerably a peaceful region wherein nations and states try to maintain a non-violent environment. However, ASEAN nations have began rearming amidst concerns over security due to the changing geopolitical landscape and in the face of aggression over territorial disputes. There has been seen an increase in defense spending among states with claims in the South China Sea. Countries have been purchasing more advanced weapon systems and expenditures on military spending have increased dramatically ("ASEAN's new arms race: nations scramble to rearm as concerns over security grow | ASEAN Today", 2017).

There is an apparent military imbalance between China and the Philippines. The Philippines has very weak defense capabilities. The Philippines is not well equipped to face any military confrontation, whether offensively or defensively. This major factor puts the Philippine maritime security at a serious disadvantageous position and always exposed to risk of attacks.

Hundreds of fishermen explore in the waters of the West Philippine Sea daily for livelihood or to look for sustenance. These locals freely navigate but do not fully realize how foreign individuals can easily assault them without enough confidence that the Philippine government can quickly defend and protect them. With nations being more prepared for armed conflict, the peaceful waters in the region can also easily be disrupted and unfavorable circumstances can easily take place.

Although the Philippines never wish to face any military confrontations nor does it choose to engage in any armed conflict against any State, comprehensive border protection

should always include programs on strengthening maritime security. Thus, even with President Duterte's reluctance to enforce the arbitration ruling, the administration still place an emphasis on the development of maritime security. The Philippines has also increased budget allocations on military spending and maritime security expenditures. The country has purchased fighter jets from Korea and patrol ships from Japan. Military equipment and naval ships are also being procured from other countries.

The Philippines' military modernization is part of strengthening the maritime security but this is not necessarily a response to the threats to security brought about by disputed claims in the West Philippine Sea. These actions are efforts to address the broad scope of maritime security threats in the country which goes beyond territorial disputes. However, it is notable that the Philippine administration does not neglect the maritime domain and is fully aware of the importance of the West Philippine Sea's strategic territorial position. Diplomatic negotiations and maritime security cooperation among countries are still the main keys for strengthening maritime security but managing maritime security will always include preparing for possible armed conflicts especially when territorial disputes remain unresolved.

CHAPTER V: ANALYSIS OF CHINA'S FOREIGN POLICIES

Despite the trend of globalization and international relations, international issues, laws, treaties, and agreements can still have different meanings to different countries in the world. The way a country is formed and established, and political governance will affect its perception of international laws and international organizations. The same is true for the People's Republic of China. Its history and political ideologies influence the way it perceives international laws and understands territorial disputes concerning the South China Sea.

China's Perception of International Laws

The acceptance of international laws by most countries in the world significantly surged through the United Nations Conference of the Law of Treaties Convention in Vienna on May 22, 1969. During this time, China did not participate and showed interest in the Conference because of its communist ideology. China was still extremely communist and relatively isolated from international relations. This meant that Communist China does not wish to be a party to international laws and treaties (Williams, 2020).

However, China has been expanding its engagement with international relations in recent decades. As it rises to global power, isolation is not conducive to its economic pursuit. Beijing gradually joined more than 300 multilateral treaties and 130 international organizations, including the United Nations. To support its economic development, China began to incorporate international laws and standards in its domestic legal rules and governance. It has enacted domestic legal reforms that are not in conflict with its Communist authority (deLisle, 2000). China has also actively participated in the United Nations Security Council, World Trade Organization, International Monetary Fund, and other major international institutions.

China continues to assert the importance of international law and rule. However, it can be observed that China has also remained skeptical about international laws and treaties, especially if they undermine Chinese interests and sovereign rights. China does not dismiss international laws, but it also seeks to impose its legal standards and positions on the international discourse and norms (deLisle, 2000).

China has continually favored bilateral negotiations over international laws (deLisle, 2000). Communist China has emphasized on the role of treaties as a source of international law. China regards treaties as more unquestionable because they are based on direct and explicit negotiations of the signatory parties. Most international laws were shaped and made during a time when Communist China was not yet recognized by the world. Without China's participation, there is a perception that these laws were made according to Western norms without enough regard for their customs (Williams, 2020). China emphasizes that treaties are more equal and just, which should be more binding than international laws. This ideology is still prevalent in present China and influences the nation's relations with its neighbors and other countries.

China also places emphasis on treaties between independent states and not international organizations. There is a belief that international organization, such as NATO, UN, and ASEAN, will serve the interest of the state or country that mainly sponsor or finance them. This would make negotiations somehow detrimental to the interest of China. For example, ASEAN will likely negotiate a settlement in the South China Sea disputes in favor of its member countries and not of China.

China's Foreign Policies

In 2005, the Foreign Minister of China announced its peaceful development toward a stable and prosperous world. China believes that peaceful international relations and

development begin with equal global power and order wherein there is balance on the global stage. It speaks of multilateralism and equality with treaties and partnerships.

Despite its claim to peaceful development, its foreign policies in the waters of the South China Sea are nothing but peaceful. It has applied more confrontational and militarized policies in the South China Sea with prejudice to the other less powerful claimant states. It has taken a proactive approach to its foreign policies which disregard the rules and norms that are generally accepted in international laws.

The international legal rule that affects the territorial disputes in the South China Sea is the United Nations Convention on the Law of the Sea (UNCLOS). This was established on December 10, 1982. The purpose of UNCLOS was for the distribution of maritime resources in such a way that countries can manage and rationally exploit their waters within their borders. It covers a lot of issues regarding the waters and territories. It promotes equitable distribution of maritime resources and avoids overlapping claims of territories.

China ratified UNCLOS including its compulsory dispute settlement mechanisms. When the Philippines filed for an arbitration proceeding against China, China refused to participate in any of the proceedings. When the decision was made by the arbitration tribunal, it also refused to honor the decision.

China asserts that the decision and arbitration directly contravene UNCLOS because non-participating bodies are forced to submit to the decision. It asserts that the decision is a misuse of international law and the arbitration is inconsistent with international laws (Williams, 2020). However, the approach of China's contravention of international laws, including UNCLOS, is already evident even before the arbitration proceeding was filed.

In 1992, China adopted Law on Territorial Waters and Their Contiguous Areas with provisions that did not comply with the UNCLOS. China refused to follow UNCLOS even though it ratified it. It committed to a peaceful resolution of the disputes by signing the

Declaration of the Conduct of Parties in the South China Sea in 2002 but the progress is not promising for the ASEAN members.

The foreign policies of China are meant to be for its peaceful development strategy. However, its measures and approaches are sometimes inconsistent with the international order, especially with the issues in the South China Sea. It promotes multilateralism in its rise to the global economy and power, but it seeks bilateral agreements with weaker countries and states. In reality, China handled the South China Sea territorial disputes in a non-orderly and aggressive manner. Most of all, it seeks bilateral talks and implements foreign policies so it could assert its interests regardless of applicable international laws.

China's Nationalism Dynamics

China has become more assertive in incorporating its interests and preferences into the international legal rules (deLisle, 2000). It seeks to normalize pushing its foreign policies with its citizens even if these contradict international laws and norms. This has also created a spirit of nationalism among Chinese citizens in a dangerous direction.

The Communist Party of China holds a very large influence in shaping the public opinion and views of the Chinese citizens. Its government holds a lot of control over the media and information that the citizens receive. Thus, Chinese nationals can hold public opinions about South China Sea disputes that were mainly shaped according to Beijing's perception of international laws and foreign policies.

A country's foreign policies should be promoted according to its citizens' nationalistic views. China could assert that its laws and policies go against international laws because it protects its citizens' public opinions and interests more. However, it is hard to gauge public opinions if the information received has already been filtered and fitted to the authority's preference and interest.

Nationalism is crucial in maintaining a stable and solid nation. However, this could also be dangerous if it is a result of public opinion that is not based on hard truths and unfiltered facts. In the South China Sea disputes, China has emphasized to its citizens its protection of territories based on their own foreign and domestic policies. It has regarded the issues of UNCLOS as addressing foreign threats instead of objectively presenting the international rule and order. China has successfully shaped the public opinions of its nationals and now, it is using its nationalism dynamics to advance its foreign policies and political ideology in the international order.

CHAPTER VI: PEACEFUL SETTLEMENT

Despite the Philippine efforts to pursue the arbitration and with the ruling in favor of the Philippines, it still has not stopped China from doing activities that are considered illegal or violations of the provision of UNCLOS and international laws. Incidents in the West Philippine Sea are still being reported and conflicts remain unresolved. Unlawful activities that pose danger to civilian security and the marine environment must still be addressed.

There can be seen no progress on China's observance of the Philippine rights for its resource interests in the Philippine exclusive economic zone. The arbitration ruling may be considered as a final ruling on the issues presented by the Philippines before the Tribunal, but its enforcement has shown to be ineffectual without China's cooperation. However, this does not mean that settlement between the disputing states cannot be achieved. There are still several options that territorial disputes can be resolved, and all of these options can be exhausted until a final agreement can be concluded.

The Philippines has always been committed to peaceful settlement of disputes in the West Philippine Sea even before it submitted cases for arbitration. The Philippines adheres to the Treaty of Amity and Cooperation in Southeast Asia and the Manila Declaration for Peaceful Settlement of International Disputes. These treaties, which the Philippines initiated, serve as a framework for peaceful settlements of disputes while maintaining cooperation and stability among states in Southeast Asia. The Philippines also adopted the 1992 ASEAN Declaration on the South China Sea. This means that signatories of the declaration commit to exercise restraint and avoid the use of force and violence so that dispute resolutions on sovereignty and jurisdiction can be made under favorable and peaceful circumstances.

The current Philippine administration recognizes the jurisdiction and authority of UNCLOS and the binding effect of the arbitration ruling. However, it also realizes the complexity and limitations of arbitration, especially in cases wherein one party does not give

its consent. Thus, the administration believes that resolving the disputes in the West Philippine Sea should also include other peaceful settlements such as negotiation, enquiry, mediation, conciliation, and resort to regional or international agencies (Ibarra, 2018).

Bilateral Agreement

China has maintained its position to settle territorial disputes through a bilateral agreement between China and the Philippines. It refused international arbitration in the same way that it did not accept the UNCLOS Tribunal mandatory arbitration. Based on China's response, it is not expected that China will relinquish its sovereign claim in the entire South China Sea. However, there are still possibilities that China can be open to negotiations. There were instances when China agreed to negotiate its territorial claims for the sake of peaceful settlement with other claimant states.

On July 21, 2008, China and Russia signed an agreement that ended their territorial disputes over Yinlong Island/Tarabarov and Heixiazi Island/Bolshoi Ussuriysky. Under the agreement, Russia transferred approximately 174 square kilometers or about half of Bolshoi Ussuriysky to China. China also relinquished Yinlong Island to Russia. The agreement formally finalized border demarcation between Russia and China.

China was also able to reach a compromise agreement on border issues with Tajikistan, Kazakhstan, and Kyrgyzstan. In 2011, China ceded 28,000 square kilometers of the Pamir Mountain area to Tajikistan. China gave up a big portion of the land which it previously claimed while Tajikistan only ceded 1,000 square kilometers to China. This bilateral agreement was considered a victory for the government of Tajikistan.

China was also able to come up with agreements with Kazakhstan and Kyrgyzstan. In 1996, China gave 32% of its claimed disputed land to Kyrgyzstan through its border

agreement. On the other hand, China received 22% of the portion of the disputed land from Kazakhstan.

ASEAN is observed to be the main instrument for the Philippines to resolve the West Philippine Sea dispute in a multilateral approach. However, there were times when the Philippines leaned more towards the bilateral approach in dealing with the issue, especially during President Duterte's Administration. President Duterte became more open to bilateral discussions with China and showed an attitude that was eager to appease China. This was a move that opened China and the Philippines into dialogues again after the arbitration ruling that disappointed China. President Duterte has expressed preference for bilateral ties and diplomatic relations with China as a priority of his foreign policy agenda.

China has been a party to several territorial disputes due to its interesting geographical location. With its growing population and rising economy, its government will try to secure as many resources as it can and protect its borders through strategic territorial position. However, history shows that it is not impossible for China to make a compromise on its territorial claims and cede significant portions of disputed lands through bilateral agreements. Thus, a bilateral agreement between China and the Philippines, as China prefers, can still possibly resolve the territorial dispute in the West Philippine Sea.

Multilateral Agreement

The Philippines has always been an advocate of a rule-based approach in settling disputes. The country believes that peaceful resolutions are based on international laws. It seeks to resolve territorial disputes legally while respecting diplomatic relations.

The territorial dispute in the West Philippine Sea is only a parcel of the several contests in the entire South China Sea. Contests over waters and territories in the South China Sea are regional issues that can affect global and international trading and security. Thus, the

Philippines is keen on settling disputes multilaterally given its regional and international implications. The Philippine government is engaging all claimant countries to peacefully resolve territorial disputes. While it affirms its rights, it also encourages other states and parties to find confidence-building solutions and negotiations.

The Philippines has taken multilateral approaches to protect its sovereignty in the West Philippine Sea. It strongly advocated for the inclusion of the South China Sea disputes in the ASEAN agenda. The Philippines is the first claimant state to bring the South China Sea dispute for discussion as a regional security issue. It pivoted the ASEAN to issue statements of ASEAN common position on the South China Sea in 1992 and 1995.

The Philippines is one of the ASEAN members as a claimant state that really pushes ASEAN to have a common position and strong stance in the South China Sea issue. It heavily relies on ASEAN to have advantageous leverage during negotiations with China. The Philippines calls to expedite the Code of Conduct that would legally and effectively bind China and all claimant states. The multilateral approach gives claimant countries the benefit of China adjusting its policies especially when ASEAN expresses solidarity in condemning Chinese operations in the South China Sea.

Despite this multilateral approach, there were some policies and actions taken by the Philippines that were questionable to the spirit and purpose of the multilateral approach. For instance, the filing of arbitration of the Philippines was initiated without consulting ASEAN and its members. The legal action and the winning result for the Philippines may have been an opportunity for ASEAN and the claimant states to assert their rights as supported by international laws but it also put ASEAN under political pressure to take sides given the different degrees of interdependence with China of the other member states.

The Role of United States

The United States of America has no territorial claim or resource claim in the South China Sea or Southeast Asia region. However, it has interests in the resolution of the disputed territories in the South China Sea. In the ASEAN Regional Forum in 2010, the United States of America has clearly stated its national interest in the freedom of navigation and open access in the South China Sea. It supports measures to resolve any territorial disputes through peaceful and non-coercive ways.

The United States has not yet ratified UNCLOS, but it expressed support on the ruling rendered by the Arbitration Tribunal. It considered the decision as an important and peaceful step in dispute resolution. It also believed the ruling should be binding between China and the Philippines and other parties involved. The United States expects both countries to implement and abide by the rulings as part of international laws and diplomatic processes.

The United States of America has no direct involvement in the maritime and territorial disputes in the South China Sea but it has interests that it needs to protect in the region. It has several reasons for being indirectly involved and playing a role in stabilizing the tension in the South China Sea. First, the South China Sea is an important maritime transport route for commercial and economic activities from East Asia to the United States (Williams, 2020). The continuous land reclamation and militarization of the region by China increases the overall level of uncertainty on the freedom of navigation in the area. China's claim has been invalidated but it continues to develop the territories without even clarifying its position. China's actions as if it has exclusive rights in the South China Sea undermine the peaceful development and economic progress of many countries.

Second, the United States is concerned about China's growing influence on many Southeast Asian nations and how it can use its influence to detriment the relationship of the United States with other nations (Williams, 2020). The U.S. – China relations are

deteriorating rapidly for several reasons that do not relate to South China Sea issues. There are reports that China has been expanding its position in the region and other areas abroad that could prejudice the security and international reputation of the United States. The U.S. has an interest in maintaining a balance of powers in Asia. The rise to dominance of China in Asia is causing an imbalance of powers in the region and may result in instability that can affect global trading and peace.

Third, the United States has Southeast Asian allies that it is ready to defend if China continues to oppress its allies (Williams, 2020). The Philippines is a known ally of the United States in Southeast Asia. It has a defense treaty with the United States. Both countries have signed an Enhanced Defense Cooperation Agreement (EDCA) which allows U.S. forces to enhance infrastructures that can be jointly used by the Armed Forces of the Philippines. This agreement includes the exercises of military training and missions that are used for preparation for possible crisis and conflict situations (Castro, 2014).

The Philippines relies heavily on the United States for military assistance and strengthening its maritime security. The Philippines' military and defense capabilities may not be as advanced as China but the United States' presence in the Philippine territories and affairs prevents China from pushing the Philippines to a losing end. The United States is also bold in declaring its stand and support for its Southeast Asian allies and partners in their effort to protect their sovereign rights amidst territorial disputes (Williams, 2020).

The United States is one of the nations that explicitly condemn China's actions of bullying and expansion in the South China Sea. China, in response, warns the United States from using provocative actions and still insists on its sovereignty and rights on the disputed territories. Both China and the United States have repeatedly expressed their commitment to peaceful settlement and respect for international laws but both countries are becoming more adversarial and aggressive against each other. The tensions and exchange of threats have been

verbal so far but this still has an effect on the international community and the pursuit for a peaceful settlement.

The current diplomatic relations of China and the United States remain critical. However, the United States still plays an important role in the Philippines' process of pursuing a peaceful settlement of the territorial disputes. The position of the United States against China may seem to cause heat and tensions that could provoke military rivalry, but the Philippines is more assured that it could not easily fall into prejudicial measures and agreements with China because the US can still support the Philippines with their existing agreement. The United States acts as the balance between the wide disparity of powers of China and the Philippines. This role is important because negotiations could take place in more equal terms regardless of differences in military and security capabilities.

There may be tensions between the United States and China, but the alliance of the United States and the Philippines helps improve the negotiation environment between China and the Philippines as long as parties refrain from using force. The assistance of the United States in the Philippines helps promote stability in negotiations and peaceful settlement. The Philippines is honestly considered an inferior country compared to China. It cannot confront China alone although it never intends to. However, a state or nation that can rebalance or neutralize the powers in the South China Sea disputes is needed to pave the way for peaceful negotiations and settlement. The assurance that the United States can give to the Philippines is designed to avoid armed conflict and confrontations which is crucial in territorial disputes.

The Role of United Nations

The United Nations is the primary organization that provides a mechanism for the resolutions of disputes between countries and states, including territorial and maritime disputes. The United Nations is established and joined by a majority of nations around the

world to come up with peaceful and organized terms in making the world a better and more sustainable place to live in.

The United Nations has assisted in resolving territorial disputes in the past. In terms of maritime disputes, it has implemented bodies that specialize in the investigation of territorial disputes, arbitration, and mediation of conflicts. However, despite the decision of the UNCLOS, China refuses to honor the decision. This rendered the UNCLOS Hague Ruling legally binding but without enforceable outcome. Despite the lack of enforcement mechanisms of the UNCLOS in the dispute between China and the Philippines, the United Nations still has an important role in handling and settlement of territorial disputes in the South China Sea. The United Nations can still help in pursuing several options for dispute resolution.

The United Nations can still serve as a proper forum for other claimant states to properly and legally present their cases and evidence against China. The United Nations can provide mechanisms for multilateral resolution if all claimants can agree to bring together their disputes and consolidate them in a single arbitration (Birdwell & Taherian, 2020). This kind of arbitration can have a more authoritative impact and will put more pressure on China to abide by international laws.

The UNCLOS is a dynamic organization with terms, conditions, and provisions that are reviewed regularly. The United Nations can initiate in coming up with more sustainable solutions when it comes to territorial disputes. It can modify particular terms in the UNCLOS that prevent arbitration and rulings from being implemented effectively. It can create binding mechanisms for dispute resolution under UNCLOS (Birdwell & Taherian, 2020). It can formulate arbitration proceedings that are more stringent and objective that can render decisions with more enforceable command.

The United Nations can help in neutralizing the tension between claimant states (Birdwell & Taherian, 2020). It can prevent the escalation of conflicts and violence in the region. The United Nation can employ a task force that will serve as peacekeepers in the contested waters. It can encourage claimant states to cooperate in the peace-keeping and protection of the maritime environment despite their disagreements in their territorial claims.

Most of all, the United Nations can assist in implementing agreements that will be achieved by both parties. The ultimate decision and settlement can only be pursued by the Philippines and China because each party exercises its sovereignty. In the event when parties can already come up with a mutual agreement and can officially settle their disputes, the United Nations, as peacemaker and peacekeeper, can help in enforcing the agreed terms without being politically partial.

The Role of ASEAN

The South China Sea disputes might be the most complicated issue that ASEAN has to deal with. It involves several ASEAN state members but the main opposing claimant is a non-ASEAN member which is China. The different interests and degree of economic dependence of the member countries to China put ASEAN in a challenging position when it comes to the South China Sea dispute.

The ASEAN has effectively helped maintain peace and stability in the Southeast Asian region. The organization is not established to create a military alliance but it is committed to peacefully resolving issues and taking a neutral stand as much as possible. However, the importance of the South China Sea in Southeast Asia and the entire global community entails that ASEAN can significantly influence the outcome and activities in the South China Sea.

ASEAN needs to face the disputes in the South China Sea as a multilateral issue that can affect regional security and stability in Southeast Asia. The responsibility to protect sovereignty must be shared by all ASEAN members. ASEAN can do more to counteract China's aggressiveness without the need to resort to violence.

ASEAN countries must unite to align their interests and position in the South China Sea. The division among ASEAN members does not only increase China's supremacy but can also dismantle ASEAN's stability (Xie, 2016). This could also eventually slow down the progress in the region which the ASEAN has worked hard for so many years.

ASEAN is not the body for militarization, but it can still de-escalate the tensions in the South China Sea through ASEAN's diplomatic efforts. The ASEAN can lead in the negotiations with China through a Code of Conduct in the South China Sea (Hu, 2021). ASEAN can effectively provide grounds for strategic communication among all involved states and provide a neutral avenue wherein all claimant and non-claimant states can discuss their stance concerning the issues.

A robust Code of Conduct cannot be composed without ASEAN members' solidarity. The ASEAN has the role to provide a diplomatic environment wherein disputes in the South China Sea can be resolved peacefully. ASEAN members must also agree that the ASEAN is a legitimate party and organization in managing South China Sea disputes, notwithstanding any bilateral negotiations conducted outside the ASEAN (Hu, 2021).

ASEAN is still the governing body that manages diplomatic and foreign policies and relations in the Southeast Asian region. Thus, it has the ability to compel China to accept ASEAN's terms and conditions, especially when ASEAN members are united in taking their stand. ASEAN should be more proactive in leading the multilateral approach of handling the South China Sea disputes. Most of all, the international influence of ASEAN can only be recognized if there is internal unity among its members.

Code of Conduct

The Code of Conduct in the South China Sea was first proposed in 1992 between ASEAN and China. It was one of the key points of the 1992 ASEAN Declaration on the South China Sea which delegates to all parties to establish a code of international conduct that applies the principles of the Treaty of Amity and Cooperation (Point 4, 1992 ASEAN Declaration on the South China Sea). The main purpose of the Code of Conduct is to express the common stance or joint position among ASEAN members about the South China Sea disputes and to enforce China's behavior in accordance with the principles of the Code and ASEAN (Buszynski, 2003).

There was considerably slow progress for the creation of the Code. The first negotiation for the bilateral code of conduct took place in 1995 between the Philippines and China. The discussion was mainly for the parties to restrain from taking provocative acts that could lead to tensions and for China to reduce military presence in the Spratlys. The Philippines lobbied to commence the Code of Conduct. ASEAN members agreed with each other to prioritize the Code of Conduct to manage relations with China and avoid any other unlawful occupation of China in the region. The Code was expected to set the foundation for regional stability in the area and to further understand the predicaments of the claimant countries.

The first formal draft of the ASEAN Code of Conduct was written in 1999. China also came up with its draft the following year. China and ASEAN drafts had three major differences. First, the ASEAN version included the Paracels while China insisted that the Paracels was an issue that should only be dealt with between China and Vietnam. Second, China did not include any provision to discontinue any occupation and construction on the maritime features in the South China Sea which ASEAN expressly stipulated. Third, China

demanded to stop all military investigation and exploration activities in the disputed areas because of its concern of U.S. military activities in the area.

The Code of Conduct was not finalized because China insisted on its own version and refused to accept the consolidated agreement and consensus position of ASEAN. The negotiation process for the COC was delayed. Without the finality of the COC, a political statement through the Declaration on Conduct on Parties in the South China Sea (DOC) was signed by ASEAN and China instead. The DOC is a statement that outlines the fundamental principles of cooperation in the South China Sea. It encouraged confidence-building and discouraged the use of force and exercise of self-restraint, but it did not have any enforcement mechanism or penalties for violations. It was another step for the COC but it did not make any practical help in the management of conflicts and activities in the South China Sea.

Urgent Need for Code of Conduct (COC)

ASEAN and China commenced the negotiations for a COC draft in September 2013. With the increased confrontations and tensions in the South China Sea, the DOC guidelines proved to be ineffective and insufficient. The Philippines also announced its actions to improve its military modernization and equipment for West Philippine Sea contingencies. There was also a struggle to come up with a common position among ASEAN members considering that more ASEAN members have become more independent to China economically.

A COC framework was concluded in August 2017 by ASEAN. It consisted of key elements for the COC but it was formulated without China's approval or open discussion with them. This development was, however, out of China's proposal to fast-track the draft of the COC after the arbitration ruling. COC negotiations were said to be in progress and generally stable in 2018. The COC framework only recorded the commitment of ASEAN and

China to begin the consultation for a final COC without interference from outside parties.

The COC framework was finalized but without any legal binding effect or provision.

The final Code of Conduct was expected to be finalized in 2021. Pending its finality, one major concern for the COC is whether or not this will legally bind ASEAN, China, and the involved parties. Despite the urgency for the COC, construction of artificial islands and militarization in the South China Sea has not stopped. The need for a binding COC is more for the benefit of the ASEAN member, especially the claimant states, and less of China's concern.

Balancing Diplomacy and Negotiations

The territorial disputes in the West Philippine Sea have already become a political dispute. After the ruling of the Arbitration Tribunal, legal matters of the disputes were already decided upon by an authority of the decision. Despite the proper application of the relevant laws and provisions in international laws, the refusal of China to accept the decision revealed the political implications of the disputes. In the said disputes, it is nearly impossible to separate the political and legal aspects of the disputes.

There are several ways in which China and the Philippines can settle their disputes. China can take heed of the ruling and let go of its nine-dash line territorial claim as it was invalidated by the Arbitration Tribunal. However, this action may be least expected from China which is trying to rise globally. The Philippines also has a constitutional mandate to protect its territories and sovereignty so it cannot give in to the will of China. So, settlement can only be done through negotiations, whether bilaterally or multilaterally.

There are already talks of negotiations between China and the Philippines but the real challenge in resolving the territorial disputes in the West Philippine Sea is the process of maintaining peace and international relations while the disputes are ongoing. This means

preventing any potential conflict and armed confrontations while promoting international trade, commerce, and relations. While resolving issues on sovereignty should not be set aside, the process of negotiations should take place without compromising the peaceful relations of nations. There should be a focus on building relationships between China and the Philippines and cultivating economic ties. It is not playing down the dispute but balancing diplomacy and negotiations in the process of eventually resolving the territorial disputes.

The Philippines can enforce the decision in its local policies but the decision only remains as a framework or reference in the negotiation process. Foreign policies should improve the political relationships of China and the Philippines even if it means not enforcing the Award to prevent confrontations. It is not just about military confrontations or armed tension, but the government should also prevent any actions that could provoke China from restricting the Philippines in terms of commercial activities. It is not seeing China as an opponent or aggressor but as a civilized nation that is open for peaceful talks.

Balancing diplomacy and negotiations means the settlement is still being pursued but preventing tensions and conflicts is the focus rather than solving the dispute by determining which party owns which maritime feature. For the Duterte Administration, the Award was set aside so bilateral talks and peaceful dialogues between China and the Philippines could begin.

Although the risks for tensions are always present in territorial disputes, the West Philippine Sea is still relatively peaceful that is not yet a possible site for war. China, in its rise to global power, also has relations and international position to foster that could only be injured if it will commence war or armed conflicts. There were dangerous confrontations in the past and it has also shaken the diplomatic relations of the two nations. However, the desire to resolve the disputes remains. The Philippines still has the priority of preserving peace and stability in the West Philippine Sea while asserting its sovereignty in the disputed territories.

Joint Developments

Despite China's militarization of some islands in the West Philippine Sea, it is unlikely that wars will begin between China and the Philippines. Engaging in war is still a very costly resort and the Philippines is aware of its military weakness. The U.S may provide assistance for the Philippines but the extent of support is still unpredictable. War is still too expensive for whatever state and recovery will be a serious problem. Thus, both China and the Philippines have the willingness can set aside territorial disputes for more important matters that will be beneficial for both countries.

In the course of globalization, countries tend to be more civil to harness cooperation. It is not a new practice wherein states involved in territorial disputes have shelved their sovereignty claims, albeit temporarily, to make way for joint developments. Sometimes these joint developments even become keys to finally resolving the disputes.

One example is the Frigg Unitization agreement between the United Kingdom and Norway. This was signed in 1976 to allow the development of a hydrocarbon deposit field by a single operator in a location with overlapping international boundaries. Despite conflicting territorial claims, an agreement for apportioning reserves was made (Lee-Wong, 2009). Other cross-border agreements also followed involving the same disputed territories.

Germany and Netherlands also entered into joint development agreements while they still had unresolved boundary issues. They signed the Ems-Dollard Treaty in 1960 to address fishing activities in territorial seas and to protect the environment and resources. European nations and states were able to agree on other fishery policies which are regularly updated for fishing rights and access even in disputed waters (Alexander, 2022).

Between the Philippines and China, there were attempts to enter into a few joint development agreements. In 2018, both nations discussed the possibility of a joint offshore oil and gas exploration in some parts of the West Philippine Sea. The Philippine

administration gave its assurance that resource sharing would not undermine Philippine sovereignty and will mutually benefit both countries (Heydarian, 2018). However, there are criticisms that the agreement is a violation of the Philippine Constitution, and it would constitute a step backward from the victory achieved in the Arbitration Award Ruling.

Although joint development agreements between China and the Philippines have not been realized yet and there is no certainty of this from being realized, negotiations are still taking place. The Chinese Foreign Ministry expressed its hopes of working together with the Philippines in jointly developing energy projects in the disputed territories. Consultations and cooperation mechanisms are also being tackled (Castro, 2020).

In entering joint development agreements, the Philippines should ensure that it can retain its sovereign rights in the operations. Thus, one of the features highlighted in the proposed agreement is that a service contract would be governed under Philippine laws and the Philippines can get sixty percent of the proceeds as the sole owner of the oil and gas (Castro, 2020). This arrangement is believed to assert the sovereign rights of the Philippines in its exclusive economic zone. It is still unsure if China would accept this deal as it would also imply that China has acknowledged that the Philippines has sovereign rights on the territory as ruled in the Arbitration Award.

CHAPTER VII - CONCLUSION

The ruling was expected to resolve some of the issues and territorial disputes in the West Philippine Sea. It was a peaceful arbitration that would have helped clarify overlapping claims between China and the Philippines. Most of all, the arbitration signaled a hope that would shed some light and end the disputes among several claimant states in the entire South China Sea. However, both the Philippines and China have not taken any substantial policy or action that intends to implement or enforce the arbitration ruling.

China's rejection of the arbitration was expected considering the vast difference between the two countries' global power and their perception of international laws. The response of China and denial of UNCLOS arbitration showed how China assumed its superiority over the Philippines and other Southeast Asian countries. However, what really surprised the international community was the response of the Philippines following the arbitration. When the decision was published, there was a recent change in the administration of the Philippine government. Under new leadership, the approach of the administration regarding the disputes in the West Philippine Sea also changed. The administration that boldly filed for compulsory arbitration against China was replaced with an administration that preferred to be friendly with China in the midst of territorial disputes.

The arbitration ruling in the Hague was expected to change the imbalance of power in the South China Sea. However, the legal victory was reduced to a moral victory that the Philippines has not taken advantage of. The disparity in power has even grown more post-arbitration. Both countries decided to have maintained good diplomatic relations over the years. Leaders also set aside the ruling as much as they can except during meetings specifically intended for creating a Code of Conduct and processes of bilateral talks.

Despite these seemingly good relations, the Philippines needs to consider several motivational factors in using the ruling especially when it comes to its policymaking. The West Philippine Sea is economically significant for the Philippines. It is home to about 30% of the total reefs of the entire country. This coral-rich territory provides a thriving ecosystem for fish production and supports the survival of millions of marine species in the area. About seven percent of fish production in the Philippines can be attributed to the West Philippine Sea. This could easily reach up to 300,000 metric tons of fish each year. This fish production quantity has an economic value and could easily affect the livelihood of more than 600,000 Filipino fishermen if the area is not protected from foreign intrusion. Food security is also a motivational factor in the protection of the West Philippine Sea. Fish comprise about 22.4% of the protein intake of an average Filipino. Shortage of fish production due to environmental factors and damage to the marine ecosystem caused by Chinese activities are already a problem in the country.

The Philippines also has unrealized economic returns due to unexploited oil resources. The presence of the Chinese military and personnel in the West Philippine Sea prevents the country from discovering and developing potential oil resources that could help the country provide for its oil demand. The Philippines spends about US\$ 500 per year on oil importation. It also gets 20% of its power source from Malampaya which is estimated to run dry by the year 2027. The Philippines needs to explore more potential oil and gas resources which are believed to be rich in the West Philippine Sea. Exercise of sovereign rights in the West Philippine Sea means being able to reap economic benefits from the gas resources underneath the seas. This could also help save a significant amount of monetary expenses from oil importation.

The non-compliance of China to the ruling and the neglect of the Philippines on the arbitration ruling also increase the threats to maritime security in the entire South China Sea

including the West Philippine Sea. As Chinese activities in the West Philippine Sea continue to pose danger to the national territory and marine environment, armed conflicts and confrontations are also likely to happen at any time. The Philippines cannot exercise enough span of control within its territories because its administration refuses to enforce the arbitration ruling.

Tensions in the West Philippine Sea will even more intensify if the Philippines will not assert its sovereign rights in its exclusive economic zone and territories. This will destabilize the peace and security in the area and may endanger the lives of local residents and military personnel in the area. The territory in the West Philippine Sea will never be sufficiently safeguarded if the government will continue to downplay the arbitration ruling.

The arbitration ruling is in accordance with international laws. The decision was made based on legal bases regardless of differences in power and influence between the two countries. The resolution was for mutual cooperation and international peace. International laws are fundamental motivations to implement the arbitration ruling. Any action to promote and preserve the decisions in the arbitration shows commitment and respect for international laws. It should bind both countries because no state should be above any international law. The Philippines should start implementing local policies that are aligned with the arbitration ruling and the international laws applicable to the disputed territories.

Sovereignty is also a motivation to assert the arbitration ruling. The Philippines filed for arbitration signifying its sovereignty in the West Philippine Sea. It believes that the Philippines has the rightful claim on the territory and no other nation should exercise sovereign control in the disputed area. The government has the obligation to its citizens and country to protect and fight for its sovereignty in its territories. The Tribunal may have not decided on issues of sovereignty because it is outside their jurisdiction, but the actions of both countries show the intention of safeguarding their sovereignty. It is not necessary for a

country to intimidate other nations or resort to violence in order to show how they express their sovereignty. However, local policies, legislations, and jurisprudence should be aligned with the Constitution and international laws to be able to exercise sovereignty.

The Philippines have the legal advantage and strength in asserting its rights in the West Philippine Sea. Even though China does not recognize the Hague Ruling and insists on its claims in the South China Sea, the author of this study does not think that China is willing to go into war. China has heavily militarized the region to impress upon the world its military power and claim in the South China Sea. However, going into war is not its best intention and does not align with its objective to rise into a global power. War and armed conflicts will only damage their intentions and their economic progress. At most, China will do whatever it takes to pressure the Philippines to enter into a bilateral agreement that will give China advantageous terms and conditions. This may sound detrimental to the Philippines, but this is a good sign that peaceful settlement can be achieved.

The author believes that the most appropriate approach to settle the disputes is through multilateral agreements. The territorial dispute in the South China Sea is a complex conflict that involves many states with varying powers and influences. Although both China and the Philippines could limit negotiations on areas specifically covering the West Philippine Sea, it may be best to include all involved and affected parties in a multilateral negotiation. Most of all the South China Sea is an international trade route that serves the interests of almost every nation in the world. Additionally, it is a strategic defensive route that the Philippines must not give up due to its archipelago setup. To come up with the most objective and optimum resolution, various international organizations, China, the Philippines, and other claimant states must work together to end the dispute.

It is also obvious that China favors bilateral settlement over the multilateral settlement. China is no stranger to bilateral agreements when it comes to territorial disputes.

It has successfully negotiated with other states and countries in the past so the Philippines have also not closed its doors to bilateral negotiations with China.

Bilateral negotiation is a peaceful way of settling disputes and is in accordance to international laws. Although bilateral negotiations can possibly end the dispute, this may not be the most advantageous approach for the Philippines. It should also be noted that the bilateral negotiations that the Philippines and China agreed to show little to no progress at all. It has not yet resolved the problem and there is no clear direction for the agreement yet despite years of talks. Furthermore, China has not stopped building artificial islands and doing unlawful activities in the West Philippine Sea.

The Philippines must exhaust all possible legal ways to pursue a multilateral settlement. It has a legal advantage, but it also needs a stabilizer to counter China's economic power. In a multilateral approach to settlement, a neutral forum wherein parties can objectively present their position is essential. The ASEAN is the proper organization that can help in resolving issues in the South China Sea since almost all member nations of the ASEAN are direct parties to territorial disputes in the area. All ASEAN countries can consolidate their grievances and positions in territorial disputes so that they can effectively protect their interests against China.

Meanwhile, the Philippines can pressure China to cease its illegal operations and activities in the West Philippine Sea by filing a case against China in international courts and tribunals for every violation committed. It should also seize every opportunity it can get to include the territorial dispute in the agenda of all relevant international forums.

The arbitration ruling has also bolstered the confidence of other claimant states in the South China Sea because it shows how resolutions should be supported by international laws and the legal basis. The Philippines is not alone in the fight against China. The arbitration

ruling proves that the international community agrees with the peaceful settlement of any territorial disputes and should be made within the bounds of rule of law.

The West Philippine Sea may be a flashpoint for confrontations if the Philippines will insist on its sovereign rights. The author believes that China can only do so much harassment and restructuring of the historical and geographical context of the West Philippine Sea but its intentions and progress will only be defeated if it will declare war. Thus, going into war against the Philippines would be a detrimental option for China. The Philippines must grab the opportunity to assert its legal and sovereign rights while China has not yet persuaded the world to accept its overlapping claims in the West Philippine Sea. The rule of law must prevail in the South China Sea, including the West Philippine Sea.

APPENDIX 1: Answers to Interview Questions

1. Is the friendly approach of the Duterte administration towards China beneficial economically to the Philippines or does it restrict the country from realizing more economic returns?

In consideration of Duterte's pivot to China, Duterte received about US\$24 Billion in promised loans and investments from China. Duterte's term is ending in less than five months and less than 5 percent of those promised loans and investments have materialized. Duterte shelved the enforcement of the Arbitral Award in exchange for those promised loans and investments. Clearly, Duterte has been taken a ride by China.

2. Should the United States, ASEAN, or United Nations become more involved in the maritime disputes in the South China Sea?

Yes, the UN and all states interested in preserving UNCLOS as the constitution for oceans should be more involved in the South China Sea dispute. If China can just seize the South China Sea as its own national lake then the UNCLOS will collapse and there will be no legal order in the oceans of our planet. The rule of navel cannon, and not the rule of law, will prevail in our oceans. Might will be right. All countries will spend enormous amounts to buy warships for it will be the only way to defend maritime zones. There will be naval skirmishes, which should escalate into regional or even global wars.

3. What might be the most constructive policy for the Philippines towards the implementation of the arbitration ruling?

The Philippines should convince the world that if China seizes the South China Sea, the world will enter into a tumultuous period where right is might and armed force or threat of armed force will return as an accepted means of acquiring territory and maritime zones. The UN General Assembly should pass every year a resolution demanding that China comply with the Arbitral Award.

4. What are the approaches to peaceful resolution that the Philippines could pursue?

The Philippines should pursue all legal remedies under UNCLOS and under international law. The Philippines should appeal to world opinion.

Source: Email Interview (2022, February 18)

Hon. Justice Antonio T. Carpio
Former Associate Justice
Supreme Court of the Philippines
Manila, Philippines

APPENDIX 2: Answers to Interview Questions

1. How likely do you think a clash or armed confrontation between China and Philippines will be in the West Philippine Sea and what participation will the United States have in such circumstances?

According to Magno, resource conflicts such as in the South China Sea that are left unmanaged could increase interstate tensions and even the likelihood of armed confrontations. However, with the renewal of Visiting Forces Agreement and a new American President, it is evident that Washington has prioritized its security or economic strategy for the region, applying relative pressure on Beijing to respect freedom of navigation in the South China Sea. Although the United States' support of the Southeast Asian states' autonomy of action and defense of their territorial waters remains a major U.S. strategic asset, in the face of Chinese regional primacy, future prosperity and security of the Philippines would remain to be unpredictable.

2. How do energy, trade, and political considerations drive tensions in the disputes in the West Philippine Sea?

The semi-enclosed waters of the South China Sea serve as marine environment of globally significant biological diversity and productivity. More importantly, the South China Sea is one of the most important trade routes in the world, linking the countries of the Middle East and Africa, as well as Europe, to China and Southeast Asia to serve as energy supply channels for superpowers in Northeast Asia. Given this, the economic importance of the West Philippine Sea to all littoral states in Southeast Asia has embroiled the claimants in a nexus of conflicting maritime claims.

3. How threatening is China's military modernization in the South China Sea and what is its impact in the West Philippine Sea environment and security?

China's increasing military expenditure and frequent military and naval exercises and surveillance in the SCS have caused fear among Southeast Asian states' disputed area. After decades of free-for-all fishing, dwindling stocks now threaten both the food security and economic growth of the rapidly developing nations that draw on them. Furthermore, China's island building and giant clam poaching have caused most of the documented reef destruction in the South China Sea, an area totaling 62 square miles (163 square kilometers). Island building grinds up corals for use as foundation material, smothers reefs that become the base of islands, and creates sediment plumes that suffocate nearby reefs. Additionally, poaching of giant clams entails grinding up corals to loosen shells from the reef.

Source: Email Interview (2022, February 20)

Mary Elizabeth Dumdum
Research Associate
Senate Electoral Tribunal of the Philippines

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